

October 30, 2007



**TRANSCRIPT**  
**October 30, 2007**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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Council President Praisner,

Ladies and gentlemen, if you could rise for a moment, oh, I'm sorry, we have invocation by Steve Sharkey from First Church of Christ Scientists in Chevy Chase. I apologize.

Steve Sharkey,

Good morning. I will begin with readings from the Bible. Thank you. First Kings. And God gave Solomon wisdom and understanding exceeding much in largeness of heart even as the sand that is on the seashore. And when the Queen of Sheba heard of the fame of Solomon concerning the name of the Lord, she came to prove him with hard questions. And she came to Jerusalem with a very great train with camels that bear spices and very much gold and precious stones and when she was come to Solomon, she communed with him of all that was in her heart. And Solomon told her all her questions, there was not anything hid from the King which he told her not. And she said to the King, it was a true report that I heard in my own land of thy acts and of thy wisdom. How be it I believe not the words until I came and mine eyes had seen it. And behold the half was not told me. Thy wisdom and prosperity exceeded the fame which I heard. Happy are thy men. Happy are these thy servants which stand continually before thee and that hear thy wisdom. Blessed be the Lord thy God. So she turned and went to her own country, she and her servants. And all the earth sought to Solomon to hear his wisdom which God had put in his heart. And from Matthew. Seek ye first the kingdom of God and his righteousness and all these things shall be added unto you. And from the writings of Mary Baker Eddy, the discoverer and Founder of Christian Science, daily prayer. Thy kingdom come. Let the rain of divine truth, life and love be established in me and rule out of me all sin. And may thy word enrich the affections of all mankind and govern them. Amen.

Council President Praisner,

Thank you. General Business. Madam Clerk.

Linda Lauer,

The Council is announcing the public hearing for December 4th at 1:30 on the Spending Affordability Guidelines for the FY09 Operating Budget. That's the only calendar change, however, I did want to note that there's one petition from residents supporting a new Growth Policy that addresses traffic congestion, open space preservation and global warming. Thank you.

Council President Praisner,

Thank you. Just want to alert Councilmembers and the public to check agendas for Committee meetings as we go forward over these next few weeks because there may be issues associated with a special session that require folks to make modifications to their Committee schedules. So not that we know of any at this point, but there may be so while the legislature is in session, we need to be a little more flexible. Minutes, Madam Clerk.

Council Clerk,



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We have the Minutes from October 2nd, 15th and 16th for approval.

Councilmember Leventhal,  
Move approval. Councilmember Leventhal moves approval.

Councilmember Ervin,  
Second.

Council President Praisner,  
Is there a second? Councilmember Ervin. All in favor of approval of the Minutes, please indicate by raising your hand. Unanimous among those, oh, unanimous. We all arrived so quickly, I forgot to count. Consent Calendar, is there a motion?

Councilmember Knapp,  
So moved.

Council President Praisner,  
Vice-President Knapp. Is there a second?

Councilmember Trachtenberg,  
Second.

Council President Praisner,  
Councilmember Trachtenberg. Are there any items that anyone, Councilmember Ervin?

Councilmember Ervin,  
Yes, I have a question about 3C, Resolution to approve the FY09 Council Grants Process. My question is on Page 3 of the packet on setting priorities. I'm not quite sure what the Committee by looking at this packet has agreed to do regarding priority setting. Does it have to do with the organizations that you heard back from and therefore these are the, these are the, are these the priorities that you're asking the Council to approve?

Council President Praisner,  
Yes. I'm going to turn to both of the Committee Chairs who may want to comment.  
Councilmember Leventhal, Chair of Health and Human Services.

Councilmember Leventhal,  
I want to thank Ms. Ervin for her question. We had an excellent discussion, my colleague, Chairwoman Trachtenberg and I, in the joint meeting of the HHS and MFP Committees. The Resolution that we're bringing before the Council does not indicate to the community priorities for grants. That does not preclude an opportunity for the Council to make such an announcement prior to December 14 when the application is posted on the internet. So as of this moment, you know, staff got back to us with staff's findings from the input that Councilmembers and a lot of community input was provided. But we're not in a position today to state to the community we will prioritize in these



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areas. So that remains unresolved. What is clear in this resolution is that we will have a process that closely resembles the process for FY08. We will have a grants advisory group. We will have clear deadlines. We will have an application posted on the internet so that those groups that may be thinking about applying have got ample early notice to look for the application when it's posted on December 14 and then submit the application by the February 1st deadline. So there may yet be additional details that the Council may or may not choose to add. We may, if it's the sense of the body, if we want to identify priorities, we may still do that. But as of right now, we're not there.

Councilmember Ervin,  
I actually have a comment on that.

Council President Praisner,  
Yeah, sure go ahead.

Councilmember Ervin,  
My concern is that we heard responses from 78 organizations. I'm looking at how many responses on each of these different items. And I just want to say that I am very concerned that we would base our public policy decisions on responses from such a small group of people from the County who knew anything about this. I know that Impact Silver Spring used their network and they distributed surveys but that doesn't tell us much. And so I'm very cautious about how we proceed in the future.

Council President Praisner,  
I share some of your concern, Councilmember Ervin. In addition, I don't think it's unusual at all that the groups that would come back would be advocating for funding in the areas in which they're involved. So that I think has got to be factored into the input and the advocacy. Certainly there's nothing wrong with advocating but I'm not sure that that's a priority setting process in the broadest sense. But as I think Councilmember Leventhal, I'm going to call on Councilmember Trachtenberg as well, indicated, that's not in front of the Council at this point. Councilmember Trachtenberg.

Councilmember Trachtenberg,  
In response to the remarks made by Councilmember Ervin, what I would suggest is that this continues to be a work in progress. And while we've defined a process, obviously there are still different aspects that need to be worked out. And it would interest you Valerie, that in Committee discussion in terms of priorities, two that were spoken about to some degree were after school activities and behavioral health for seniors and at-risk youth. And interestingly again from the very small sampling, you can see that they're raised by the community, but I think we would all agree with you that 78 responses is not adequate to set priorities. And we know that. So I would encourage that we'll continue to have conversations about this and obviously look for more efficient ways to get more people engaged in the priority setting conversation.

Council President Praisner,



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Councilmember Leventhal.

Councilmember Leventhal,

Yeah, I mean I guess I would just say at this point it's up to this body. And Valerie if you or any other Councilmember has views about how we should proceed, then you know, certainly the two Committee Chairs are interested in the input of colleagues and certainly the Council President will I think work with us to schedule another discussion if it needs be to scheduled. I think what we're bringing forward to the community is pretty clear. I don't think it's going to generate confusion. The two areas that we've learned are not simple that we heard in the feedback in the last round were, we would like it if you would tell us how much money will be available. Well we may not be able to do that. Maybe we will, maybe we won't. It's never easy in advance of a budget to know how much money will be available in the budget. We'll know on March 15th the economic assumptions that the County Executive is working from. He sent us a memo strongly encouraging us not to do that. So the Council has not reached a conclusion on that. And priority setting I would just say in a gigantic County with a four billion dollar budget with nearly a million residents in terms of meeting the needs of many needy populations is never a simple exercise either. So, you know, these are things that sound good when you first hear of them, but in terms of execution, they may not be necessary. But if your view Valerie or any other Councilmember's view is that we ought to have another meeting and fill in the gaps and take another stab at these two issues of identifying priorities or setting aside money and indicating to the community how much money there will be, we have time between now and December 14th which is when the real public notice would go out of exactly how this is going to work. If we don't do that, my view is that's probably okay. I think we've provided you know, adequate guidance now to the community as to what we'll expect and how they can, how the community can participate.

Council President Praisner,  
Vice-President Knapp.

Councilmember Knapp,

Thank you Madam President. I just want to extend my appreciation to the Committees and to the Chairs. I know this has been an ongoing discussion and arduous at times. But I think a very important one and I appreciate the amount of effort that you put out there to make sure the community has clear guidelines as to how to proceed. I also appreciate the two issues where the Committees didn't necessarily reach a recommendation, that of setting priorities and identifying funding earlier in the process. And I think we should consider looking at both of those a little bit further. And I don't know the best way to do that yet, but I actually like number two in the identified funding earlier in the process where the Council could identify basically a target number. I'm not surprised that the Executive would respond that he would proceed with the kind of the typical way because I think what has tended to happen in the past is that the Council has basically acquiesced to whoever the Executive was at the time and basically accepted whatever his recommendations have been as it relates to his grants priorities.



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And as a result, we kind of take what's left as far as what we think is left in the budget and kind of back fill the pieces. And so I would argue that in the spirit of partnership on the part of the Council since we actually do the appropriation that it may make sense for us to put a number out there and basically give guidance to the Executive that half of that number is to be allocated by him and the other half by the Council. And if the County Executive were to exceed such number, then recognize that we may come back with a different set of priorities. I think we should talk about that a little further because I don't, I think as a result, the Council ends up being shortchange, we end up shortchanging ourselves because we kind of, it's the last thing that we do. And I don't think that that's necessarily the best way to proceed either. So I just wanted to put that out there, something for potential further conversation. But I really appreciate the Committee's efforts because I think you've done a great job at getting this out there so that the community has a good understanding of how to proceed next. And hopefully we can continue to refine that and clarify it even further.

Council President Praisner,

One way of perhaps, I think from the idea of prioritization, there may be time in conversation among Councilmembers before the 14th to bring some language forward. But from a standpoint of the setting a mark if one wants to as a goal, one could always look at using the spending affordability process as a mechanism if folks are inclined. But that's something we can continue to discuss. There being no other lights, all in favor of approval of the Consent Calendar, please indicate by raising your hand. Roger and Nancy, are you voting on the Consent Calendar? That is --. [multiple speakers]. Oh, I'm sorry. That is unanimous. Okay. Thank you. Let's move on then to Legislative Session. We have a Legislative Journal, Madam Clerk.

Council Clerk,

Yes, you have the Journal of October 2nd and 16th for approval.

Council President Praisner,

Is there a motion?

Councilmember Andrews,

So moved.

Council President Praisner,

Councilmember Andrews. Second by Vice-President Knapp. All in favor of the approval of the minutes please indicate. Unanimous for the minutes. Now move to Introduction of Bills. There is an Expedited Bill 26-07, Taxicabs - Passenger Vehicle Licenses sponsored by the Council President at the request of the County Executive. Public hearing on this piece of legislation is scheduled for November 13th at 1:30 p.m. And we also have a Bill for Final Reading. Committee Chair Andrews from the Public Safety Committee.

Councilmember Andrews,



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Thank you, Madam President. This is Bill 25-07 which would add two positions to the Criminal Justice Coordinating Commission, two members. Originally the bill would have added the Fire Chief and the School Superintendent. After discussion, the Committee and with the Director of the Criminal Justice Coordinating Commission, Mr. Subin and with Dr. Weast and with the Fire Chief, the Committee is recommending that we add two positions, but two different position. That we add the Director of the Department of School Safety and Security and the Assistant Chief of the Fire Code Enforcement and Fire Explosive Investigations section. Those are the two individuals in those departments and the school system that deal with criminal justice issues. And so since this is the Criminal Justice Coordinating Commission, it makes sense to have the point people there that deal with those aspects within those agencies. So the Committee amended the bill in that way and is recommending approval by the Council.

Council President Praisner,  
Okay. Madam Clerk, call the roll.

Council Clerk,  
Ms. Ervin.

Councilmember Ervin,  
Yes.

Council Clerk,  
Mr. Elrich.

Councilmember Elrich,  
Yes.

Council Clerk,  
Ms. Floreen.

Councilmember Floreen,  
Yes.

Council Clerk,  
Ms. Trachtenberg.

Councilmember Trachtenberg,  
Yes.

Council Clerk,  
Mr. Leventhal.

Councilmember Leventhal,  
Yes.



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Council Clerk,  
Mr. Andrews.

Councilmember Andrews,  
Yes.

Council Clerk,  
Mr. Berliner.

Councilmember Berliner,  
Yes.

Council Clerk,  
Mr. Knapp.

Councilmember Knapp,  
Yes.

Council Clerk,  
Ms. Praisner.

Council President Praisner,

Yes. Bill passes 9-0. We'll now move to District Council Session. There is a resolution to approve use of Advance Land Acquisition, ALARF funds for the acquisition of real property: the Hillmead Neighborhood Park. Phyllis T. Piotrow Property. The Planning, Housing and Economic Development Committee did discuss this prior to last week's session of the Council when this was also discussed. There were a couple of issues that were raised within the context of the use of ALARF. Number one being the fact that according to Article 28 of the State Code, the Planning Commission can use ALARF with the approval of the Council to purchase land for highways, schools and other public uses. And ALARF is traditionally also limited to references within, as the Article says, Article 28 says, requires the acquisition be shown on a master plan. The, this property is not specifically shown in a master plan, but the master plan for Bethesda-Chevy Chase states that Parks Department will examine specific sites if requested by local residents or other civic associations for acquisition. And as Council staff notes, the, this may be a stretch is the term used, this may be a broad net so to speak as far as using Article 28. The concern that was raised within the context of this discussion was that the inclusion of that language within the Bethesda-Chevy Chase master plan is probably a unique inclusion. And therefore, there are not the, there's not similar language within other master plans that would allow the use of ALARF for parks not specifically or property not specifically defined in the master plan. And this issue, I think, warrants further discussion. And the PHED Committee will have that follow-up conversation scheduled as soon as we can to see the extent to which we need to look at Article 28 from that perspective. Second discussion was in the reimbursement of ALARF. As you know,





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whenever there's an advance land acquisition, the question of reimbursing for the acquisition is part of usually the PDF associated with the specific project being funded. In the, this case, the Planning Commission continues to believe that there is not a repayment necessary for parkland. The Council has not or Councilmembers have not indicated support for that interpretation. And have allowed a couple of exceptions in most cases related to both the nexus of where the funding has come from, namely the significant amount of money within ALARF right now that is a reimbursement to the County for acquisition of property for the intercounty connector. And secondly, because there is so much money in ALARF at this point, but again, this is an issue that needs to be continued to be refined as far as direction to the Planning Board on this issue. Finally, in the process, well, not finally, but in the process of the conversation there was a discussion of the Legacy Open Space process and the relationship between ALARF and Legacy Open Space. Staff has incorporated within the packet a response from Planning Board staff on the Legacy Open Space process. But I think the issue becomes one of the community often suggesting when parcels become available that Legacy Open Space or ALARF funds be used and I think it again warrants a clear policy conversation that makes sure we are clear about the approach for new parcel review under Legacy Open Space and as well the context of ALARF funds perhaps being used since there is significant money in that category at this point. The last issue that came up specifically to the Hillmead site relates to the single family home that exists on the parcel at this point. And the packet for appropriation approval includes, funds \$65,000 to demolish the house and eliminate any residential facility on the site. The Committee asked questions about continuing to have the house available to be occupied for alternative public policy purposes. And we've gotten a response as far as the cost is concerned. And the questions that were raised in the Committee related to what one is planning to do with those dollars versus what you know, what we're talking about as far as basics versus significant upgrades to the house. But we have the answer should Councilmembers be interested in retaining the house for public policy and public use purposes at this point. And then you also have further discussion within the packet on rationale for park acquisition and on acquisition priorities. The Committee recommends approval of the acquisition. I'm not sure if Committee members since that was done by polling, made any reference to the house on the parcel. I personally am supportive of retaining the house. I don't know what other Councilmembers -- .

Marlene Michaelson,

Two of the three Committee members were able to get back to me and say they supported the acquisition and Ms. Praisner you made the note about retaining the house.

Council President Praisner,

Okay. So the majority of the Committee supports --.

Marlene Michaelson,  
Acquisition.



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Council President Praisner,  
Acquisition of the parcel and retention of the house on the site for public purposes.  
Public policy purposes. Okay. Councilmember Leventhal.

Councilmember Leventhal,  
Thank you, Madam President and Committee Chair Praisner. That is a very good overview of the major issues here. I still have a couple of questions.

Council President Praisner,  
Sure.

Councilmember Leventhal,  
I do think this is an important thing for the Council to spend a little bit of time on. And I appreciate the thought that's gone into it and I thought the packet was very clear and helpful. I appreciate Marlene and Shondell writing it up. Let me ask about the issue of the house first. Once this becomes a park, then who actually decides about the house? I heard the exchange between the Committee Chair and staff and I heard some suggestion that the Committee majority thought the house should be retained. Is that a decision for the County Council to make? I see the language which I'm not, a parliamentary inquiry, I'm not clear whether this amendment is before us. It was suggested by Park staff stating that nothing will happen until the Council is satisfied that it's in the public interest. I'm supportive of that. I think that's a good approach. But I still would like to understand whose decision is it what happens to the house?

Marlene Michaelson,  
Once it is parkland--.

Councilmember Leventhal,  
Right.

Marlene Michaelson,  
It becomes the decision of the Planning Board. However at this point in time, I think if the Council feels strongly one way or the other, first of all, if you feel strongly it should be retained, we should take out the funding for demolition and this language which indicates ambiguity and that the amendment, which indicates that there would be further discussion about this.

Councilmember Leventhal,  
Well, let me suggest, I mean, on the one hand I could move now or any member could move understanding as staff has noted that there are federal funds available for renovation if the property is going to be used as a group home, we could move that it should be a group home. I'm not sure that's timely. I mean I would think that there ought to be some opportunity for, to vet that and discuss you know, who and how and all that. So I don't know that we need to do that today. I'm getting the evil eye from the Councilmember from District One. But I'm not much concerned about that. I'm an



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advocate for special needs housing. And I know that many others on this Council are as well and I have some concerns about how this whole process played out with respect to, you know, I've just got concerns about how this whole process played out. So, if it's a win-win and we get a beautiful park and we get some special needs housing out of it, that may be a terrific outcome. But I don't know that we're ready today to make that decision here at the Council. My concern is though that it might slip out of our hands to be very candid about it. And so I see the distinguished Chairman is here and maybe the Chairman could speak to who decides and who will take guidance from who and how will the disposition of the house be determined?

Royce Hanson,

Well, I think there's a prior question. If the house is retained, just given the way the property sits and everything else, if the house is retained it compromises its value as a park. If you acquire the property, it probably shouldn't be acquired as parkland. If you're going to keep the house because the grounds and so on I think would need to be used. You're using more than the house. So, but if the property is acquired as parkland, it would be up to the Parks Department and Planning Board to lease it I suppose to someone for use. We certainly would take into account the Council's view on this. But I don't think that it makes a lot of sense to acquire the land as parkland and then basically use it for something else. If you're going to use it for something else, acquire it for something else.

Councilmember Leventhal,  
Okay.

Royce Hanson,  
And then you are back into repayment of the ALARF.

Councilmember Leventhal,  
Okay, if I could reclaim my time.

Council President Praisner,  
Sure, go ahead George.

Councilmember Leventhal,  
It seems to me having read the packet very carefully and taking an interest in this, because it's an unusual set of circumstances.

Royce Hanson,  
Right.

Councilmember Leventhal,  
I am not clear on what is now before the Council. I see and I appreciate Park's staff, Mr. Gries or Gries, I'm sorry.



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Bill Gries,  
Gries.

Councilmember Leventhal,

Mr. Gries has suggested to us language which is on the, the pages aren't numbered, but it's on the third page of the memo, demolition shall not proceed until the Council is satisfied that demolition is in the public interest. Marlene has now suggested we shouldn't even talk about demolition if it's the Council's sense that we don't want to go to demolition. There are many issues involved in this. I'm not, I'm likely to vote for this. I mean, the Committee majority has recommended it. I'm likely to vote for it but I think that this touches on many significant policy issues. One of them is the issue of existing structures in parks in a County where, I would never suggest you know, new construction in a park for a purpose other than a park purpose. I wouldn't suggest that. Parkland is privileged land. It's sacrosanct land and I would not suggest that we build new housing or new you know, offices in parks. I never would suggest that. But where you have existing structures that have been there for a long period of time and where there is a great need for special needs housing and other public purposes, and this is not unique to this new park. There are other buildings in parks where it is the view of the Parks Department that it's undesirable to have buildings in parks, but people are living in them and public purposes are being met by them and it touches, and I don't want to get far a field, but let me just say it also touches on the issues of these "recreation centers" in parks which are existing structures which might have a new life for other useful public purposes. So this touches on a wide range of decisions before Parks and Planning. And again my question is, who decides? I've heard the Chairman's view that if you're going to acquire it as a park, it ought to be just a park and nothing else. It doesn't sound like that is the view of the majority of the PHED Committee. So number one, what is now before the Council? Marlene has suggested we not refer to demolition at all or we not agree to demolition but we don't have language before us that resolves that.

Marlene Michaelson,

Right. If the full Council agrees with the majority of the PHED Committee that demolition should not be an option and you want to take it off the table, then I would suggest taking out this language.

Councilmember Leventhal,  
Okay.

Marlene Michaelson,  
If you believe that additional --.

Councilmember Leventhal,

Can I stop you on that point Marlene? May I say Madam Chair that I respect that a process ought take place. I don't, my own view is that the Council is not ready today to conclude the decision on demolition but what I appreciate here is that the Committee wants to reserve the option of maintaining the structure. So, how do we do that rather



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than, rather than stating today it's a closed decision. I know there's great community interest in this.

Council President Praisner,  
I think one would approve the acquisition but remove the demolition funds from this and continue this conversation at another time.

Councilmember Leventhal,  
Where are those demolition funds in the resolution?

Marlene Michaelson,  
They aren't identified as a separate dollar amount, but it is \$65,000 of the total. And so what we would have to do is deduct \$65,000 from the total in the resolution. Alternatively, if you feel that you're still going to, you want to debate it, I think the language that the Park staff has proposed is appropriate. I simply would not use that language if you've made a definitive decision that you don't want --.

Councilmember Leventhal,  
Okay, could I suggest an alternative here? Could we say something like, with the condition that the Parks Department shall not make any decision on demolition of the improvements until such time as a thorough conversation is had with the Council and the Council is satisfied that the disposition of the improvements is in the public interest. Something like that. So it just -- . [inaudible] Well, it is. But it, the language that's here specifies that demolition is still going to take place basically. I mean, it says this is how much it costs to demolish the improvements and the Council has to be satisfied. So it still heads you in the direction of demolition.

Council President Praisner,  
So you would modify the language in what way George? I just want to make sure --.

Councilmember Leventhal,  
Right, we need to make that clear. Mr. Gries, where in the resolution would your proposed language go?

Bill Gries,  
Well, I had the original resolution I sent up here with this packet asking for the -- .

Council President Praisner,  
Bill, your mic is not on and you need to -- .

Marlene Michaelson,  
If you look at Circle 16.

Councilmember Leventhal,  
Circle 16.



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Marlene Michaelson,  
On number 3.

Council President Praisner,  
Folks, Marlene, just a sec. Let Bill who was asked identify himself.

Bill Gries,  
When I submitted this item for the Council's consideration back in October when we first got the contract, it was our recommendation, when I say our, I'm talking about the staff and the Planning Board that this property be demolished because we feel that in order to really have this acquisition be of a benefit to the existing park, the house should come down. And in that first resolution I had asked for \$65,000 to conduct that demolition. And it was only after we had our meeting with the PHED Committee that you asked me to provide numbers on what it would cost if we wanted to use it for some other public purpose. And at your direction I went ahead and had those numbers prepared and then submitted those to you with the substitute language that if you wanted to have us not proceed with the resolution until the decision is further vetted that we could do that. But it doesn't change I think the Planning Board's original position and the staff's position that --.

Council President Praisner,  
I understand that, but that's not the question.

Bill Gries,  
Okay.

Council President Praisner,  
The question is where in the Resolution would you put the language you are proposing?

Bill Gries,  
Okay, that was on paragraph 3.

Council President Praisner,  
Circle 16?

Bill Gries,  
Paragraph 3 on Circle 16.

Council President Praisner,  
Right.

Councilmember Leventhal,  
Okay, so I'm wordsmithing here at the last minute, I didn't come prepared with an amendment.



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Council President Praisner,  
Sure.

Councilmember Leventhal,  
But it seems to me that we should say something, I think we should have a new paragraph. We should, in paragraph 3, the total cost of the acquisition shall not exceed the sum of \$2,500,000 period.

Council President Praisner,  
Period.

Councilmember Leventhal,  
And then we should have a new paragraph 4 that states something like no demolition of existing improvements shall take place until dialogue has taken place between Park and Planning and the Council and the Council is satisfied that the disposition of the improvements is in the public interest.

Council President Praisner,  
Okay. Does everybody understand the language that Councilmember Leventhal is proposing as an amendment to this resolution?

Councilmember Leventhal,  
Right. I think that requires a second.

Council President Praisner,  
Yeah, I know that but I just want to make sure folks understand. And his motion does three things. It stops on number 3 on Circle 16 after \$2,500,000. There is a period and he deletes the rest of that. He has a new number 4 which I'll ask him to repeat again. And the existing 4 becomes 5.

Councilmember Leventhal,  
Okay I did not write it down but I'll try to get it.

Council President Praisner,  
Number 4 is no demolition of existing improvement shall occur until the Council is satisfied that that demolition is in the public interest.

Councilmember Leventhal,  
And I think we anticipate a dialogue between the Council and Park and Planning.

Council President Praisner,  
Right. Okay.

Royce Hanson,



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Madam President.

Council President Praisner,  
Yeah, just a second. I want to make sure everybody understands that is --.

Councilmember Knapp,  
No demolition of existing facility will occur --.

Council President Praisner,  
No demolition of existing improvement will occur until the Council has had a conversation with the Planning Board and the Council is satisfied that the demolition -- .

Councilmember Leventhal,  
That the disposition.

Council President Praisner,  
Disposition.

Councilmember Leventhal,  
Because we may keep the improvements, we may not demolish them.

Council President Praisner,  
Okay, that the disposition of the improvement is in the public interest. Okay. Is there a second?

Councilmember Floreen,  
Second.

Councilmember Ervin,  
Second.

Council President Praisner,  
Okay. All right. Seconded by Councilmember Floreen and Ervin.

Councilmember Leventhal,  
Thirded by Councilmember --.

Council President Praisner,  
Together. Okay. So the motion does those three things. Ends 3 at \$2,500,000, I don't know why I want to say \$250,000. Wouldn't that be nice. Deletes the rest of number 3. Adds a new number 4. And makes 4 a number 5.

Councilmember Leventhal,  
Thank you.





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Council President Praisner,  
Now we will have conversation on the amendment. Now Dr. Hanson your comment.  
Yes, Marlene?

Marlene Michaelson,  
Just a point of clarification. I'm assuming that you want retain the dollars in, or was that not the case?

Councilmember Leventhal,  
Well.

Marlene Michaelson,  
So the \$65,000 is being.

Council President Praisner,  
I don't think --.

Councilmember Leventhal,  
I don't think it matters. It does not exceed \$2,500,000. It doesn't exceed that. That's fine.  
I don't think you need to change the dollars.

Marlene Michaelson,  
Well, I think I misspoke earlier in that the \$65,000 in this resolution is in addition to the 2.5 million. And you can keep it in here in with this language. Which to me says it cannot be spent.

Councilmember Leventhal,  
We're not authorizing demolition, so we're not paying for demolition.

Marlene Michaelson,  
Okay, so take the funding out.

Councilmember Leventhal,  
In this resolution. So the cost of acquisition is 2 million 5 period.

Councilmember Trachtenberg,  
Yeah, it could be separate.

Councilmember Leventhal,  
If at a later time we decide to demolish, we could authorize the demolition if that's what we decide after a conversation.

Council President Praisner,  
Okay. Now, Dr. Hanson.



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Royce Hanson,

I think if you proceed in this direction, you may want to change paragraph 2 on Circle 16 as well. To say that the subject property may be used as a parkland addition to Hillmead Neighborhood Park or for another necessary and proper public service.

Marlene Michaelson,

If it is not used as parkland, we don't have any rationale for using ALARF. [multiple speakers] No, the linkage, the master plan linkage, --.

Royce Hanson,

Marlene's right. If it's not going to be parkland.

Council President Praisner,

Right.

Royce Hanson,

And it is not going to be usable parkland -- .

Council President Praisner,

Well, I think that conversation is a conversation that would follow based on the disposition question. Not on, because we are not deciding that point at this point.

Marlene Michaelson,

Yeah, my recommendation would be to say we are acquiring it as parkland and there will be further discussion of use later on. Otherwise you can't use ALARF and since this contract is expiring shortly, we wouldn't have time to go through, for the purchase, we wouldn't have time to go through any other acquisition alternatives. So if you want to retain the option for acquisition right now, it needs to be as parkland at this time.

Royce Hanson,

I think Marlene is correct on that. It seems to me that it would be useful however to make it clear that if, I think you're getting us and you into a very difficult situation. Which is to acquire something as parkland and then transfer its use to something else.

Council President Praisner,

Well, I think the, I actually think Royce that discussion is a discussion the PHED Committee has started to have but not completed and that is the issue of, is a residence on a parkland change the park from being a park.

Councilmember Leventhal,

Correct.

Council President Praisner,

And I think -- .



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Royce Hanson,  
It's quite well on the size of the park.

Council President Praisner,  
Perhaps. But that conversation has not occurred to, with a closure at this point and that's what I think Councilmember Leventhal's motion allows us to do while still acquiring the parcel at this point with a rationale for a park which is the Council's intent.

Councilmember Leventhal,  
Madam, President?

Council President Praisner,  
Yes Mr. Leventhal.

Councilmember Leventhal,  
I appreciate the point. I think you and I are very much in sync on this. I acknowledge that, and this is why I am suggesting the Council not decide today about the disposition of the property, that there will be strong community interest, we represent the people who live nearby. We also represent a lot of people with special needs that special needs is one potential use that's been identified by staff as a potential source of federal funds so the cost could be minimized. We haven't had that conversation yet. The organizations that meet the needs of disabled populations have not yet had an opportunity to look at this and see if it's feasible. There is you know, some substantial amount of additional land that would be added to the park and the specimen trees would be preserved under any circumstance. I mean, as I think the Chair points out, this is not unique. This is not the only building standing in a park that Park and Planning has said we really need to knock it over because it's not consistent with a park purpose, but the community interest was overriding and the decision was to retain the existing structure. Not build new structures in parks, but retain the existing structure to meet important public purposes. So this is an important wide-ranging policy discussion that we need to have with Parks Department regarding a variety of structures in parks. An so I don't, so I appreciate at all times the Chairman's strong advocacy for his point of view, but I do not accept his friendly amendment and I do not necessarily agree without knowing a lot more about the site, that the continuance of an existing residence on this property makes it useless as a park. Until I know a lot more about the nature of the property and the size of the property and the outline of the property and the outline of the trees whether we might you know, have some other public purpose on parkland, I'm not going to be persuaded simply by the assertion of the Chairman whom I greatly respect.

Royce Hanson,  
We would be very happy to take you to see this particular property. But unfortunately, this contract must have Council approval or not by tomorrow.

Councilmember Leventhal,



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And I'm suggesting we approve the contract, and Dr. Hanson I'm suggesting we approve the contract today.

Royce Hanson,  
I'd like you to approve it for a park.

Council President Praisner,  
Well, that's what we're doing.

Councilmember Leventhal,  
You're making the assertion that my amendment precludes it's use as a park and I disagree with that assertion. And I do have other points after we vote on this.

Royce Hanson,  
It may or may not.

Council President Praisner,  
On the amendment George?

Councilmember Leventhal,  
No, once the motion is disposed I have another question on this, on the acquisition.

Council President Praisner,  
Okay. All right. Good.

Councilmember Leventhal,  
Thank you.

Council President Praisner,  
But, not on this issue. On this issue, the amendment, Councilmember Floreen.

Councilmember Floreen,  
Thank you Madam President. Well, as the one who raised this in Committee, I'm a little startled Royce by your commentary because right now we have such a special needs facility house on parkland in Silver Spring next to the library.

Royce Hanson,  
Yes, we do.

Councilmember Floreen,  
My observation of that is that it has worked just fine. And in addition to that, it has long, for a long time been an issue for the Commission, I think they're easing out of it now, but the issue of housing for County employees has always been, or parks employees has always been something that the Commission at least has worried about. I'm a little troubled by the suggestion that people with special needs are inherently incompatible



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with the parkland environment. I suspect we're not talking about a soccer field here. We're talking about a pleasant place in a lovely community. Which is an opportunity I would suggest should be afforded to many of our residents. So I think the way that those relationships might or might not be managed warrant for the conversation. You don't have to turn over however, whatever, an acre to such an effort. It can be the a lease of a structure and that's the end of it. There are ways to satisfy a lot of competing community objectives I think in this process. That can get everybody to where they would like to go or at least have a conversation about what is really doable or not. [inaudible] But I have to say given all the other issues that we are facing these days, if we don't try very hard to find places for our residents, they will have no place to go in Montgomery County. We're close enough to that point already. But I think the issue is and actually this isn't an exchange. The issue is let's give it a shot. And so I just wanted to correct the record because there's some suggestion that this is just a majority of the Committee, I think it's a unanimous Committee recommendation.

Council President Praisner,  
Oh, okay. Fine.

Councilmember Floreen,  
At least speaking with my colleague over my left here.

Royce Hanson,  
I would like very much to have that conversation with the Council.

Councilmember Floreen,  
Thank you.

Royce Hanson,  
The Parks Department has for many years, going back to my prior Chairmanship, made houses on parkland available for a wide variety of other uses of social benefit. I hope that when we have that conversation however that everyone will keep in mind that we acquire property sometimes with houses on it for parkland. If it's appropriate, and we have no use for, no immediate development plans for the park, we have made houses available. We, and in some cases, a house is very appropriate for a park use as well as for some other social use. But fundamentally, we're not in the landlord business, we're in the park business.

Council President Praisner,  
Councilmember Elrich.

Councilmember Elrich,  
I'm not convinced that no use is compatible with the park. But I'm also not comfortable with beginning a discussion by immediately saying this is a special needs facility opportunity. I mean, if anybody's learned anything I would think from all the special needs discussions, -- discussions is you don't create a situation that de facto creates



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we're going to put a special needs facility here without the discussion with the community first. That discussion has to happen first before we decide what road we're going down. I'm not adverse to that. I understand special needs perfectly well. You guys know that I, you know I raised two Down's Syndrome foster kids. So I know that there's a lack of place in the community for people with special needs. But the process is really important. And I think starting a discussion you know, almost straight out with you know, this is a special needs opportunity is the wrong way to start this discussion. I think the right way to start it is to say we've got an asset here, what's the best use of the asset? That may be one of them. You know frankly from my point of view, we might be better off you know, carving out a small lot around the single family house, selling it for a million or million and a half, taking that money and putting it to work maybe to address special needs, maybe to put it back into park funds to acquire another lot or more lot you know, more land someplace else. I can see a lot of different ways that that could turn out, could be used as an asset. And at the end of the day, we might decide just knock it down and recover the whole thing as a park. So I'm open to the discussion. And I think we should have a discussion about what to do with the asset, but I don't think we should start with a you know, a pre-bias or a prejudged conclusion that this is the best way to do it. I mean who knows, I mean, it might be the money that the thing could generate might generate more of what you want in terms of ability to meet special needs than the building itself would. In which case you know, is the purpose to provide the maximum special need benefit or is the purpose to put a special needs facility in that house. I mean, I think the purpose is to provide, you know, the maximum benefit and I'm interested in seeing you know, what the different options might be.

Councilmember Leventhal,  
Madam President, may I respond to Mr. Elrich's comments? Very briefly.

Council President Praisner,  
When we come back on the next issue if you want George.

Councilmember Leventhal,  
Okay, that's fine, sure. Okay.

Council President Praisner,  
Councilmember Berliner.

Councilmember Berliner,  
Well, I'll just share with my colleagues. I'll be opposing this amendment and do support demolition. I have to say that I think Dr. Hanson has made it clear that this parcel was acquired with a particular purpose in mind. It was for parkland and it was to use this entire area as parkland. I fully appreciate my colleagues' desire to find areas that are appropriate for group homes, for our disabled community and am fully supportive of that. But I believe that this property was acquired with a particular end use in mind. And as the Chairman said, it is as a park. And that park and that that objective cannot be fulfilled with a home on it. That is what the head of our Planning Board has said in his



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professional judgment is the case. And I don't know why in this context we would override that judgment. So I don't get it quite frankly. I think that is an unusual circumstance. I appreciate that it has a lot of gnarly edges to it and that is you know, people are trying to figure out how can we go forward with this. But I think to compromise the fundamental purpose for which it was being purchased is an inappropriate way to get at the fact that this is an unusual circumstance. It is also my understanding and I would ask for clarification that this particular home has asbestos in it. Is --.

Bill Gries,  
If I may comment on that.

Councilmember Berliner,  
Yes.

Bill Gries,  
The inspector that went out and gave us the estimate believes that there are asbestos tiles on the floor and there may be some lead paint issues. But we haven't had a chance to do actual lab work to confirm that so. But the period of construction for the house makes it a pretty reliable conclusion that it's there.

Councilmember Berliner,  
So I have to say I know that we're all struggling with an unusual circumstance, but given the recommendations of our Planning Board that this property be acquired for a particular purpose, a purpose that the neighborhood obviously supports, to at this moment interject the notion that we will compromise the fundamental purpose by retaining the structure in order to explore the possibility of using a structure that probably has asbestos for other purposes as yet unidentified, I can't go there and I would ask my colleagues not to go there.

Council President Praisner,  
Councilmember Ervin and then I'll go back to you George.

Councilmember Ervin,  
I just need a point of clarification here about the size of the park and the size of the house. I don't know anything else--.

Bill Gries,  
The existing park is approximately 4.3-acres. It's developed with two tennis courts and two outdoor basketball courts and it has a play structure that was just put in place a couple years ago through a involvement of a community project. This addition would add another 1.34 acres to the park. And the house that's on the property I believe is 4,000 square feet or larger. It's a large home built around 1935.

Council President Praisner,



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Okay. Back to you, George.

Councilmember Leventhal,

Well, I just want to clarify what is before, I just want to clarify what is, what my motion does and does not do. Okay, what my motion does is it accepts the recommendation of the Planning Commission to acquire this property as parkland. What it does not do is it does not say anything about demolition. That's what we're voting on. We're voting, if this motion passes, we would agree with what the Planning Commission has recommended that we should acquire this parcel as parkland and we are not making any decision whatsoever about demolition. We are not voting to construct a group home. We are not voting to expose anybody to asbestos. We are not voting to do anything other than to acquire the property and be silent on the issue of demolition. I'm very much in sync with Mr. Elrich's comments that, and I so stated that you need to have an opportunity for public input. You need to have an opportunity to explore with various providers potential uses and none of that is precluded by my motion.

Council President Praisner,

Okay. The amendment to the existing resolution is in front of us. It again takes three actions. Ends 3 at \$2,500,000, the second line. Adds a number 4 and makes 4, 5. All in favor of the amendments to the resolution? Councilmembers Ervin, Elrich, Floreen, Trachtenberg, Praisner, Knapp and Leventhal. Those opposed. Councilmembers Andrews and Berliner. We are now back to the full resolution. Councilmember Leventhal.

Councilmember Leventhal,

Okay so Dr. Hanson from the strength of your views on using this parcel as parkland, you might think that the Planning Commission had all along intended this parcel for many, many years, been coveting this parcel and developing ideas for how it was used as parkland, but just a few months ago, you were prepared to adopt a four-unit in-fill subdivision on this parcel. So it certainly is not the case that this was part of some long time plan that the Parks Department had for this parcel. So I guess I would like to understand the following. This is the really important point. Okay, we had before us a few weeks ago and it's, we can talk about it now, we've disposed of it, it's not before us anymore, a local map amendment. And the petitioner had of his own volition requested a zoning change and came forward to Planning Board which approved the zoning change and that sent it to us. Okay? And we were instructed by our Hearing Examiner that under those circumstances where the only reason the matter was before us was because the owner of the land had requested that it come before us, that to propose taking that parcel as a park would be very shaky legal grounds. Now, this is different. Here, as the packet correctly points out, we have a willing seller and I'm prepared to vote for the acquisition. But what I think we need to be clear on and I think we need to be clear from Parks and Planning about is, are we today sending a message that all you need to do if you don't want to see in-fill development is make a heck of a lot of noise and if you make enough noise, ultimately, that in-fill parcel will become a park. Are we sending that signal today Mr. Chairman?





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Royce Hanson,  
No.

Councilmember Leventhal,  
Why not?

Royce Hanson,  
Because that's not the position of the Board. We deal with subdivision cases or zoning cases that come before us and deal with them on their merits. If at a later time a property owner comes to us and seeks acquisition of that property for parkland and if it is appropriate for parkland and if there is a source of funding available for parkland, we may decide to acquire it if we think that it serves the public interest to do so. But I think both the development decisions and the acquisition decisions have to rest on their own merits in a particular case. I don't think it is particularly wise to mix those situations and they were not mixed in this. Although, there was a great deal of interest in the community prior to the subdivision case and there were requests to acquire this parkland.

Councilmember Leventhal,  
Okay. Well, that's a good answer and I appreciate the answer very much. I just want to be clear that in voting for this it is critically important the distinction between having a willing seller who came to the Parks Department and said alright, fine, let's work something out, I'm ready to sell this for a park and other situations of which a number of pending right now where the owner of a property wants to use that property as the owner desires, but the neighbors not surprisingly would rather have a park. Parks are wonderful things. We would all like lots of parks adjacent to us. But this is a critical distinction that I want to be clear about here. Because most of the time when we have adjacent neighbors saying you know, instead of what the owner of the property wants to do with that property, we'd really prefer a park. This is a different circumstance than that.

Royce Hanson,  
This is a different circumstance and there's another wrinkle in this that I think is useful to keep in mind. The Board was, how to word this, quite cautious about this acquisition. In fact, we asked after the owner had approached us for acquisition and Mr. Gries had had the property appraised, the Board felt that the initial value was higher than was justified and Mr. Gries went back then to the owner and renegotiated a price so that a portion of the value of the property is being donated in this case.

Councilmember Leventhal,  
Yes. Okay. I understand. Thank you.

Council President Praisner,



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Okay. There are no other lights. So the resolution is in front of us as amended. All in favor of approval of the Resolution for the Advanced Land Acquisition Fund, Council, that is unanimous. Thank you all very much. We will now move on to the second item on the District Council Session which is introduction of Zoning Text Amendment 07-15, Signs - Permit Fees, sponsored by Councilmember Floreen, Ervin and Praisner. I need a motion on a resolution to establish a public hearing for December 4th at 1:30 p.m. Is there a motion? Councilmember Ervin. Is there a second?

Councilmember Trachtenberg,  
Second.

Council President Praisner,  
Councilmember Trachtenberg. All in favor of approval of the resolution. That is unanimous. We are moving out of District Council Session to introduce a resolution to consent to the annexation by Chevy Chase Village of the Wohlfarth Property. Is there a motion needed for this resolution as well Mr. Faden? No. Okay. So the resolution is introduced. I just want to make one point for my colleagues' sake and also give Mr. Faden and Mr. Zyontz a little homework assignment. In the process of reviewing this issue, it came to my attention and I'm sure the Council as well as you read the packet, that the Memorandum of Understanding signed by the County's Chief Administrative Officer consents to an annexation of property. And in my view, that's the first time I've ever seen an annexation not dealt with by the County Council, but being dealt with administratively by the CAO in an MOU before the Council has consented to any annexation. So I am a little concerned about, it's a previous CAO, but I'm a little concerned about the CAO or a CAO or anyone in the Executive Branch taking an action to approve an annexation before the Council has had a chance to formally weigh in. And so I'm going to ask Mr. Faden and Mr. Zyontz to craft a letter to be sent to the Executive Branch raising this concern and requesting that in future annexations be dealt with the way they have been traditionally which is through Council and not through an MOU involving administrative personnel. Okay. So that item has been introduced. And the Council will act on it at a subsequent, on November 6th is when we are tentatively scheduled to deal with that. All right, we're only half an hour behind schedule. But we want to move now into a worksession on the Growth Policy. And I would invite those who are here for that item, Mr. Hanson and staff to join us at the table. Where did Royce go? I'm sure he'll be back shortly. I know that there are at least one or two, well we have a couple of challenges this afternoon as far as the schedule is concerned. I know there is at least one Councilmember who has to leave early. And there is one Council, oh you are, okay, and there is, well there is at least one Councilmember who has a memorial service conflict as well. So we'll try to work through this morning as much as we can and then proceed to take whatever straw votes we can in this process. It would be helpful it seems to me, Karl and Mr. Orlin and Dr. Orlin and Mr. Faden, for us to just be clear about materials that were given to the Council late yesterday or at least yesterday afternoon or this morning depending upon when folks picked up the parcels paper since some of us were in Annapolis and some of us were otherwise occupied. And I want to make clear we all know what we're dealing with in what packet. So, Glenn?



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Glenn Orlin,  
Yes, you should have five pieces of paper.

Council President Praisner,  
Five?

Glenn Orlin,  
Five packets.

Unidentified  
That's all?

Glenn Orlin,  
One is agenda item 6, comma 8. The basic one. Worksession.

Unidentified  
Dated?

Council President Praisner,  
Dated October 30th.

Glenn Orlin,  
Dated October 30th.

Council President Praisner,  
Worksession.

Glenn Orlin,  
Does anybody not have that? That should have been in your Friday packet.

Councilmember Floreen,  
Worksession.

Glenn Orlin,  
Correct.

Council President Praisner,  
Not as thick as 9 and 10.

Glenn Orlin,  
The second one is October 30th dated, items 7, 9 and 10. Also was distributed on Friday.

Council President Praisner,



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Oh, no, they're not as thick.

Glenn Orlin,  
They're both marked worksessions.

Council President Praisner,  
Yes correct.

Councilmember Knapp,  
Okay. Good.

Councilmember Trachtenberg,  
I have those.

Glenn Orlin,  
Then late yesterday, very late yesterday, there is an agenda item 6, 8 addendum. Who does not have that? Okay. One. Then there is a supplementary packet for agenda items 7, 9 and 10. It's just a very slim one. It's a couple pages. Dated October 30th. They're all dated October 30th.

Michael Faden,  
That was late yesterday.

Councilmember Trachtenberg,  
Okay. That's -.

Glenn Orlin,  
That's another one? Okay.

Councilmember Trachtenberg,  
Okay, I need that too.

Glenn Orlin,  
I think I have -- . I have one.

Council President Praisner,  
Yeah, so did I. I don't have that one either.

Glenn Orlin,  
And finally there is a colored map with intersections on it. It looks like this.

Unidentified  
-- need that one.

Council President Praisner,



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We all need that one, I think.

Unidentified  
Yeah, everybody.

Glenn Orlin,  
[multiple speakers] We're getting them. It's coming.

Council President Praisner,  
More maps, please.

Glenn Orlin,  
We're going to get them. Let Amanda do it.

Council President Praisner,  
If my staff is listening and they have the maps, if they could provide them, that would be helpful.

Glenn Orlin,  
We have enough here.

Unidentified  
Get a cartographer please.

Council President Praisner,  
Okay, thank you. Okay. Everybody have five pieces?

Councilmember Trachtenberg,  
Yeah.

Council President Praisner,  
Okay.

Councilmember Trachtenberg,  
Well -- .

Glenn Orlin,  
You distributed this yesterday, right?

Michael Faden,  
Yeah.

Council President Praisner,  
Okay. I think Councilmembers are again familiar having received the packets last Friday for the two packets that were prepared prior to the last two days. It would be helpful if



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seems to me for us to begin with an explanation about the other three items so that you do a brief overview on those items. Karl or Glenn or Mike.

Glenn Orlin,

Okay. I'll do them. First of all, the addendum for items, for agenda items 6 and 8 contains really two, three pieces of information. One is a little bit of follow-up on the public school adequacy test given that the superintendent has released his recommended CIP for 09 to 14 and we anticipated that you'd immediately want to know what the impact of that program would be if in fact those projects that he has recommended are recommended by the Board and ultimately approved by the Council in July. I guess the first thing to that of course is that none of that would have an effect immediately on the Growth Policy if the Growth Policy goes in effect immediately. But as of July, our initial review of this and we've only been able to look at the sum and Bruce Crispell is here and can elaborate a little bit more but not much more, is that the Superintendent is recommending additions at nine elementary schools and a reopening of an old elementary school as a new elementary school. And the result of that would likely, in fact probably put all of the clusters which might be in some kind of a threshold problem, school test, those that are in the northeast consortium would probably no longer be in a problem as of July. In the down county consortium, most of them would not be a problem as of July, although it's possible that one or two would still. And the other clusters where there's a problem, most of the problems are in northeast and down county consortium areas, but the other areas including Clarksburg and Wooton and BCC, those would remain. Those would not be affected. So, that's the first part of the packet. The second part of the packet, you asked for what the results of the new PAMR charts would look like based on a four year test and a six year test for the three different options you looked at last week and so the charts are attached and the summary of the, which areas would go into full mitigation, which would go into partial mitigation are on Pages 2 and 3 although you'll note that the partial mitigation policy areas, we don't have percentages by each of those policy areas yet. The Planning staff worked on this all weekend, late part of last week and all weekend, but was unable at this point still to be able to come up with the percentages. They could probably do that in the next day or two. But it's not something they have ready for you today. And then finally, at the bottom of Page 3 and top of Page 4 are a couple of other items which we really should have covered in the main packet, but we neglected to. One was the County Executive's, noting the County Executive's position not to approve PAMR at this time, instead to have the Executive, Planning Board and Council staff working over the next six months to develop a better plan. And when we get to it, Ms. Schwartz-Jones can talk some more about that. And then secondly Ms. Floreen had a proposal to, has a proposal to exempt affordable housing developments from the school and transportation tests and we talk a little bit about that. That's the addendum for the 6 and 8. The supplementary packet for 7, 9 and 10 essentially replaces Circle 17 in the main packet of 7, 9 and 10. What we did was, we found one error and wanted to correct it. We also wanted to add some more examples and some more information, for example, what cluster each of these areas would be in, each of these examples would be in, what the school facility payment would be and give you new totals. But essentially think of these two pages with



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the attachments here as replacements to Circle 17. And then finally the map, the Council asked last week for a map showing the intersections of the County and how they, the major intersections compare to the existing critical lane volume level of service. And you can see it's color coded and you can see that where it's in red, it means the volume capacity ratio is over 1.0 which means that the critical lane volume at the intersection is greater than the standard for that intersection. And the yellow ones are those that are under by as much as 20%. And then the size of the dots also talk, tell you a little bit about the size of the volume.

Council President Praisner,  
And the red ones?

Glenn Orlin,  
The red ones are the ones that are over capacity.

Council President Praisner,  
Okay.

Glenn Orlin,  
The orange ones are under capacity but within 20% of being at capacity. And I see some, I guess it's not in the legend, but I see some squares, white squares that I presume are just intersections which are okay. Not sure what those are.

Council President Praisner,  
So to the extent there are intersections that aren't shown here, they're not shown here because -- .

Glenn Orlin,  
They're better than 20% better than the standard.

Council President Praisner,  
Okay. All right. Just wanted to make sure so folks understood.

Glenn Orlin,  
And the big blue, the blue circles and triangles represent where there's developments, development happening.

Council President Praisner,  
Okay. Alrighty. Thank you.

Glenn Orlin,  
Sure.

Council President Praisner,  
Good. Any questions on the packets? Nancy, question on the packet.



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Councilmember Floreen,

Well, I just had a comment and I'm very disturbed because I understand that, which one was it, the agenda, the tax one, tax packet wasn't available to the public. We were trying to point people to it as of yesterday afternoon and it wasn't on the web. So I am concerned about the availability of anyone to participate with us on this us. I thank you for getting it to me. But why isn't this stuff going up on the web as soon as it's made available to the Councilmembers.

Glenn Orlin,

Well, we did send it over through the process to the print shop to scan. I'm not sure what happened in that particular matter.

Councilmember Floreen,

But as of yesterday afternoon it wasn't up, like 3:00.

Glenn Orlin,

I can't answer.

Councilmember Floreen,

We were trying to explain, what we're looking at and --.

Glenn Orlin,

Yeah.

Councilmember Floreen,

Nobody can, can even look at it online much less -- .

Glenn Orlin,

--problem. We did send it out to the long list of stakeholders that you've noted in the past, but you're right, it did not get out to the public in general.

Council President Praisner,

So to the extent you were a registered participant you got a copy sent by email, but the general public did not have it available as of yesterday.

Councilmember Floreen,

I don't know about this registered participant if that's a new, I mean, I understand there's --.

Council President Praisner,

Nancy, we've always distributed things to folks that have signed up or testified or participated. I'm not suggesting that that's --.

Councilmember Floreen,





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I'm not either.

Council President Praisner,  
A substitute for the public.

Councilmember Floreen,  
Ms. Praisner, I would just like to finish my comments. I'm concerned about the ability of anyone to have an opinion or to give us a perspective on what we're looking at if that information is not available. And I appreciate the fact that we're distributing to people we know. But there are lots of other folks out there that do take an interest, they may not have, you know, sent us an email that said please put me on the --..

Glenn Orlin,  
I don't know what happened in each of our offices, but in our office oftentimes, we'll get a call from a constituent that says, look, you know, we see that the Growth Policy packet is on the web, this one's not, what happened and we email it to them. So, we got a couple of calls like that.

Michael Faden,  
One I think.

Glenn Orlin,  
Well, I got one and you got one.

Michael Faden,  
It was the same one.

Glenn Orlin,  
Oh, it was the same one. So we got one and we sent it out to that person. But we do the best we can. And sometimes this thing, stuff happens.

Councilmember Floreen,  
Well, I know. And we need to fix our electronic system.

Glenn Orlin,  
And we'll fix it and the stuff will still happen, I just have to guarantee we will do the best we can.

Councilmember Floreen,  
These items are not available. Are these addendums on the web now?

Glenn Orlin,  
No, no, not yet.

Councilmember Floreen,



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When --.

Glenn Orlin,  
We'll put them on later today. We just, LIS got them this morning.

Councilmember Floreen,  
We need a procedure for this to be improved.

Council President Praisner,  
Well, as you recall, I requested staff to prepare them and get them out as early as possible prior to the normal procedure. But if we're still getting materials, it's kind of hard to do that. We'll keep doing it and that's, try to keep improving on the process. Okay. Then let's begin, it's -- . Yes, sure.

Councilmember Knapp,  
Packets.

Council President Praisner,  
Yes.

Councilmember Knapp,  
Okay thanks. I didn't have a comment on the packet, I just had to get past the bookkeeping piece. I don't know how you're planning to proceed as far as the straw votes. I just wanted to make a suggestion and do with it what you will. As I went through the packets last, over the weekend, one of the things I still struggled with is how the pieces work together with each other. And so to the extent that we would do straw votes on elements later on this afternoon after we've walked through the pieces as opposed to doing them on a case by case basis, because I'm still not sure I could, I'm still not sure I necessarily understand how the all the pieces hang together. And so to have taken a straw vote on one thing only to find out later in our discussion that there's an impact on another piece, and have to go back and change a vote because it wasn't where I anticipated it going, as opposed to walking through all the pieces and then potentially doing straw votes, I don't know, 3:00 this afternoon and kind of walking back through all the pieces once we understand how they work together.

Council President Praisner,  
I appreciate that. And part of the problem is the challenge of having Councilmembers all day long on that issue. But what we can do is as we go through the items, we can make comments about its relationship to other pieces and try to deal with this in the same way that we worked through it last week with the exception of the new materials where there are new issues.

Councilmember Knapp,  
I understand.



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Council President Praisner,

So when we talk about school, staff can answer questions or make comments about its relationship or difference with the traffic test issues if that's helpful.

Councilmember Knapp,  
It might be.

Council President Praisner,  
To your process.

Councilmember Knapp,

I mean I just put that out there and perhaps if there's a matter of, if there's a straw vote abstaining until such point later I can come back and say, once I see how all the pieces fit.

Council President Praisner,  
Okay. All right.

Councilmember Knapp,

And then I just had one broader question if I could. And that is, when we started last week, my issue was, from my perspective, was trying to understand what we were trying to fix in our existing policy or as the Chair indicated, it may not be so much a matter of fixing what was, what's broken as it is identifying a mechanism for sustainability going forward. And so what I was curious about is, I think that's kind of from the Chair's perspective how that's laid out. A lot of what we're working through today now are recommendations from the Committee. And so I guess my question back to the Committee members is, is the Chair's description of kind of their perspective and the changes that they have proposed the same framework that the Committee took since there are differences or did the Committee have, what were the Committee's kind of overriding objectives so that we can have some sense as to how the Committee got to where it did as we kind of do our assessment. And I don't know if that's to you Madam Chair or to the other Committee members.

Council President Praisner,

Well, I don't, I can't speak for the other Committee members. But I don't think the Committee differs in the conversations that we've had with the Planning Board from a standpoint of overall objectives of trying to both look forward about the sustainability issues and quality of life issues, but also responding to the components of what the Growth Policy is supposed to be about. Which is trying to pace the level of development with the adequacy of and the existence of and plans for future infrastructure as more specifically identified as schools, and there are modifications in the school tests recommended by the Committee, but they are variables on the Planning Board's and the previous structures that we've had in place. There is on the part of at least some Councilmembers and I believe the Planning Board as well, a recognition of or a desire to look beyond the existing intersections when a development occurs, no matter how



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stringent they, those indicators and evaluation criteria may be and how far out from that development you go, there is a desire to look more at the up and downstream and the broader sense of the County from a policy area perspective. And in our conversations with the Planning Board, the question is how you approach the issue of policy areas. The Planning Board has brought to us a new way of looking at this that I think focuses more broadly on issues of mobility and availability of alternatives and tries to respond in some way to the issues we've talked about of conditions within the County and broad County policies as it relates to capacity to absorb congestion, focus of development, air quality and quality of life issues that are yet in some ways to be developed. But are things that we want to continue to look at in the context of quality of life and stability issues and sustainability issues. So that the Committee's recommendations sometimes are unanimous, sometimes are 2-1, sometimes are 2-0-1. In the context of reviewing and perhaps adding a policy perspective which is the Council's prerogative and also reflecting some questions and concerns related to the new approach that we're talking about and hoping to have that evolve over time as we continue to massage and improve on a structure that we have in place. As the Planning Board has indicated, they believe that this test that they are introducing is a stronger test than the previous policy area approach that we had in place in this County. And there has been, to varying degrees, reactions to not having a policy area, a test and also reactions to the one that is being proposed by the Planning Board. And I think it's a question of confidence level and of probing to expand on and develop the Council's understanding and through us hopefully the community's understanding of what we're trying to achieve. Individual Councilmembers on the Committee I think will comment as they did last week from the PHED Committee perspective. The MFP Committee has its recommendations as well. So it's a question of trying to marry infrastructure needs and future needs related to growth with the pace of that growth and the location of that growth based on an assessment of the existing capacity of those areas and the comfort level with that marriage is, I think, where the debate lies. And where the discussion will probably occur more directly.

Councilmember Knapp,  
Thank you.

Council President Praisner,  
And then the question of how you fund that infrastructure that is needed in the future is a question of how much is the new development role versus the County's role. Okay,  
Councilmember Ervin.

Councilmember Ervin,  
Thank you Ms. Praisner. I want to go back to Councilmember Knapp's question about how we are going to proceed. I was here last week when we went through the PHED Committee's recommendations. We've gotten so far into the weeds here, that's it's very difficult for not only, I'm going to speak for myself, myself as a Councilmember, to be able to explain exactly what we're doing to my constituents in my district. And so I need to go back to what Mike started with, he asked this question last week, he just asked it



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again, in terms of the overall policy objectives for the Annual Growth Policy. And I think the we're all over the map on this one. And it seems to me that we need to begin with that policy conversation before we begin to break this thing out into recommendations. I don't know pages of very dense information and material that most people who live in our community have no idea what it means and how it impacts their life, how it impacts growth and development and issues of sustainability, so I want to start there. Because before we delve into this thing, I'm going to have a very hard time voting to recommend any of these items without understanding where we think we're going to go. And so I have two things and we can get to this at some point during this conversation, but I still have no idea what the correlation between the Annual Growth Policy and traffic congestion is across the County. We've lead people to believe in our County that this AGP is the panacea, that we pass a strict Annual Growth Policy and all of a sudden we have less traffic congestion. We know that that is not the case. This is not the panacea. What's the relationship between the Annual Growth Policy and overcrowded schools? And so I think that we set ourselves up in our communities for very big disappointment that we'll pass a Growth Policy and there will still be congestion and there'll still overcrowded schools and what will we really have done? So I want to hopefully have that overarching conversation about what it is we're trying to accomplish.

Council President Praisner,

Well, I couldn't agree with you more that whatever Growth Policy we pass does not mean that there will never be an overcrowded school or that we will wipe congestion. I would never state that, campaign on it or suggest it. So the, well, yeah, but I'm only speaking for myself right now Valerie, I can't speak for other Councilmembers at this point. But the point I'm making is that we have how many units in the pipeline that have been approved over seven years worth of development if it all occurred?

Karl Moritz,

Right. Over 25,000.

Council President Praisner,

Over 25,000 units? And jobs? Square feet?

Karl Moritz,

Over 75,000.

Council President Praisner,

Over 75,000 square feet of, --.

Karl Moritz,

No, I'm sorry. Over 75,000 jobs.

Council President Praisner,

Jobs, okay.



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Councilmember Floreen,  
Yeah, that's almost --.

Council President Praisner,  
Nancy, you haven't been recognized. Excuse me. So the rationale of assuming that if we take an action today everything will stop or that if we took an action four years ago or two years ago everything would stop, is obviously not realistic because of all the approved development let alone all the development that will be approved through this process. What this Growth Policy as I said is intended to do is to look forward, not backward and deal with new development and the requirements of that development to contribute either to the problems we have and how you respond to it, or the new development to be consistent with the policy that we put in place. Depending upon conditions in whatever areas of the County we're discussing. If this were something that a scientist in a lab could regulate and adjust, I'm sure given the wonderful and creative and brilliant scientists we have in Montgomery County, they would have solved it. But there is a lot of variables that are not within the County's capacity to control and certainly not within this Council's capacity to control. But there are things that I believe personally we can do to do as little harm as possible, I guess is the phrase that I would use, from a standpoint of new development and its contribution to the problem and its contribution to the solution. And that is the, I think, Planning Board's approach and that's been the Council's approach through Growth Policies year after year. Four years ago, there was concern, well more than four years ago, there was concern with the existing Growth Policy, many myriads of exceptions that allowed development to go forward, and the inadequacy from that perspective. There were at that time, lots of folks who had planning approval to go forward absent the Growth Policy, part of that pipeline. So that always is a piece of the challenge. The improvements in quotes I would put them, that eliminated Policy Area Review raised significant concerns about the capacity of the County to look not just in immediate intersections but beyond that to the areas. That's part of the challenge of looking at school clusters. That's part of the challenge of looking at a stream of traffic beyond that nearest intersection. And that's the approach I think that the Planning Board took for us. I don't know Royce if you want to make any comments but I see other lights. Royce, Dr. Hanson did you want --.

Royce Hanson,  
If I could sort of respond to the question.

Council President Praisner,  
I don't know, I just didn't know if you wanted to make any comments since they were broad questions about Growth Policy.

Royce Hanson,  
Yeah, I'll try to be brief because I know you want to get into this. First, I guess, a preface responding to Councilmember Ervin and to Knapp as well is, this is complicated. And sometimes things are complicated because they're complicated. What Growth Policy attempts to do overall is to first of all achieve a reasonable level of concurrency between



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new growth and key facilities. And we have concentrated historically on transportation facilities and we have rhetorically included schools, for the first time this Growth Policy feasibly and practically includes schools. The, as Growth Policy basically provides guidance to the Planning Board in the review of subdivisions and in its administration of the public facilities ordinance. So that in approving a subdivision, we try to ensure that if the facilities to serve it, these two facilities particularly to serve it, are not in place or programmed to be in place by the time the project is completed, that the developer has taken measures to provide those additional facilities that that development will require. The Growth Policy in and of itself will not prevent the increase in congested intersections or roads. In part because new growth produces only some percentage of the increase in traffic that occurs. Similarly, it will not prevent overcrowding of schools that results from turnover in the composition of neighborhoods because growth generates only about 15% of enrollment growth. For the last several years at any rate. So the various pieces of this policy which include a mobility test for the area in which a development occurs and takes into account not only road capacity but transit capacity or the acceptability of road and transit service in an area. And school capacity is, is first of all designed to see that if that capacity is not available that the development pays its fair share of two things. One is the cost to the system of the growth. And then the cost to the specific facilities of the growth. Particularly if the facilities are not available and the applicant wants to move ahead and develop. So there's a higher cost in terms of either dollars or mitigation or both for proceeding when the facilities are operating at an unacceptable level. The, so the impact tax provision addresses the system-wide impacts of development. The facility payments or mitigations address specific circumstances in that school cluster or that policy area. In some ways, the school test and the transportation test work together. For instance, you could, if you fail the school test and you move to whatever level establishes a moratorium on residential development, the transportation test becomes irrelevant. You fail that, you're out. The reason that we recommended the impact taxes to pay for a marginal cost of development wherever you decide to set that, we recommended 100, the Committee's recommended 90. That's aimed to provide a sense of fiscal sustainability to the system. The Growth Policy does one other important thing. And that is it sets policy guidance for us in the development of master plans as well as in the development or in the development review process. We're recommending to you a significant evolution of Growth Policy. To have it focus on sustainability and the development then of a set of agreed upon indicators of sustainability that we can bring back to you regularly. And can test whether or not the policy recommendations that we're proposing and that you adopt are coming close to meeting the kinds of objectives that we've set out for them. And we've also recommended that you endorse a policy that places an emphasis on design excellence. As not only a good in its own sake, but as a key way of addressing some of the capacity problems particularly on the mobility side that are often not well addressed by projects that meet the minimum requirements but do not provide the standard of livability and accessibility and mobility that we would like to see in projects. I'm sure I've left out something.

Council President Praisner,



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Well, I'm sure there will be other questions or comments that will generate it, yes.

Royce Hanson,  
But I'm sure that someone will remind me.

Council President Praisner,  
I'm sure. Councilmember Andrews.

Councilmember Andrews,  
Thank you Madam President. Well, I thought that was a very good explanation of what the Growth Policy tries to do. What it really tries to do is to ensure that public facilities are adequate for development and that they are paced together and we have to address as part of that how they're paid for. And so we're dealing with the definition of what adequacy is and how do we pay for the new facilities that are needed to keep up with the new growth. That's the heart of it and what I think many people believe and I believe this, is that we've not had a Growth Policy that has done that adequately because it has had inadequate impact fee, impact taxes for the cost of the new schools or new transportation facilities. It's had a schools test that everybody passed so it wasn't meaningful. And what this, the proposal that came over from the Planning Board and that has come out of the Committee would establish a meaningful schools test so that it reflects real-world conditions, conditions on the ground, not theoretical conditions about what the average class size is, but it would actually be what the real class size average is in the public schools. Not a number that's divorced from that. So it's all about implementing the landmark 1973 Adequate Public Facilities Ordinance in a way that works. And it's not easy to do that. As the Chairman has said, previous comment, that development tends to be incremental and that new key facilities tend to be lumpy. They're expensive and they're getting more expensive which is one of the reasons why paying for it is a bigger and bigger issue. But the challenge of keeping up with growth responsibly requires addressing how growth is paid for and this would move us to having new growth pay for much more of its cost than has been the case in the past. The Committee recommendation is about 90% of the marginal cost of new growth and that's a big improvement over the past. And it will establish tests that are meaningful and restore a Policy Area Transportation Review that was eliminated by the Council in 2003 unwisely, I believe. So I think that this is a very important discussion. Very important policy. It makes a difference. We can do something and what we can do first is stop digging a deeper hole. The County is in a hole in terms of infrastructure. There's a huge pipeline of development out there. We shouldn't leave anybody with the expectation that things are going to change drastically. But we can avoid digging a deeper hole by putting in meaningful tests for transportation and schools which are where people feel the impact of inadequate facilities the most. So I appreciate all the work that has been put into this by the good folks at the Planning Board and by my colleagues on the MFP and PHED Committees who have labored long and hard on this. And I used to serve on both of those Committees. I appreciate all the work.

Councilmember Berliner,





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Any time you want to come back, just let me know. [multiple voices].

Councilmember Andrews,

I saw what good hands the Committees were in and I waited for the appropriate time to make comments. But I think that the Committees have done a lot of good work. And I look forward to, and I'm hopeful that the Council will adopt a Growth Policy today preliminarily that will be a significant improvement over the current one.

Council President Praisner,

Thank you. Councilmember Floreen.

Councilmember Floreen,

Thank you. I just wanted to make a couple of comments before we dove in. The issue, it's good to make it clear that there are over 25,000 houses and 75,000 jobs that are in the pipeline today. Do you know what portion of them come out of the cities of Rockville and Gaithersburg, Karl? That's always been a challenge with this.

Karl Moritz,

At least 25,000 of the jobs. And I actually didn't include that in the 75 so it would be 25,000 more jobs.

Councilmember Floreen,

25,000 more jobs.

Karl Moritz,

And that's in the cities of Rockville and Gaithersburg.

Councilmember Floreen,

So it's really 100,000 jobs. How about housing?

Karl Moritz,

My memory, I'm sorry, I don't have it in front of me. But it's in the 10,000. 8-10.

Councilmember Floreen,

So another 35,000, so it's in total about 35,000 houses that have already been approved that won't be affected by this? Interesting. This is, I mean, I think it is important to recognize as we talk about this and what the promises are that this purports to deliver is that it does not address the cities of Gaithersburg and Rockville although I think they have their own mechanisms for test. Nor does it affect federal facilities. So do your assumptions with respect to jobs, pipeline jobs include all the FDA and BRAC, Walter Reed proposals?

Karl Moritz,

The assumptions include all of BRAC and we did, we have not in the past included all of FDA but we did recommend that from now on that we do so.



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Councilmember Floreen,  
So then, so Walter Reed numbers are assumed in that 100,000 number?

Karl Moritz,  
Right.

Councilmember Floreen,  
But not FDA?

Karl Moritz,  
No, not all of them.

Councilmember Floreen,  
So there's some -- .

Karl Moritz,  
That's a partial.

Councilmember Floreen,  
Number of additional units.

Karl Moritz,  
Right. Right.

Councilmember Floreen,  
So that simply underscores the fact that this is a pretty hypothetical exercise. I wanted to ask Royce really the extent to which the Planning Board considered jobs, housing and balance issues. This has come up historically in this exchange but we never really got to it. Depending upon how all these pieces work, there have been you know, recommendations to encourage certain jobs in certain areas. Germantown, the Fairland, White Oak area with the hope of ultimately reducing some of the traffic issues. How do your recommendations jive with those County -- .

Royce Hanson,  
We didn't in this set of recommendations address a jobs/housing balance. You will see in the 355 270 corridor study that we have been working on, spent a good bit of time last night working on some recommendations about job/housing balance. I think the Board feels that that issue can be dealt with more productively in the production of master plans. And one of the reasons we're doing these corridor studies is because it is in the corridors that most of our growth occurs. And that in so doing, we can look at areas where there's a need for increased housing or for increased jobs or for a change of the balance that has already existed in those areas within the zoning envelope that's available.



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Councilmember Floreen,

And then I guess finally, did you folks consult with the industry at all in looking at some of the tests that you proposed and the partial or full mitigation issues? I've been a little startled by the \$30 million number that's included in your most recent, we saw last week and you included in your most memorandum that we've received sometime in the past 12 hours, having to do with, that's how much it would take for, in terms of infrastructure-type elements for a good sized office building to advance either in, again I guess the examples were north Bethesda or eastern part of the County. Is that, I mean has there been any kind of reality check as to the math? \$30 million for one project? Is that in addition to whatever other kinds of fees are associated? Is that, is there any kind of response from the industry as to whether that is doable? I mean, I know this is a wealthy environment and a desirable environment, but did you give any thought to the point as to which point in time this became undoable? Not doable?

Karl Moritz,

Actually your --.

Councilmember Floreen,  
Moratorium.

Karl Moritz,

Your first question was to what extent did we meet with the industry and the answer to that is we treated the industry pretty much the same as the rest of the general public.

Councilmember Floreen,  
Sure. Yeah.

Karl Moritz,

In terms of the amount of outreach that we provided. The second part I guess is the specific aspects of the proposal that reflect the issue that you raised and I think that's most clearly reflected in the Planning Board's decision to have partial mitigation go from 0 to 50% instead of 0 to 100% in the partial mitigation category because the examples that we cite, that you've just mentioned, are ones to show the Council in particular, but everyone in general what the consequences are of various levels of trip mitigation requirement.

Councilmember Floreen,

I know, but \$30 million for one project. And we'll get to that, I know. But just conceptually, do you know what the experience rate is for other single projects to deliver such an amount of infrastructure on their own? I mean, is that real, you think that is a realistic business obligation?

Karl Moritz,



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Well, remember too that the requirements under Policy Area Mobility Review are not designed specifically to be affordable. But to reflect the mitigation that's needed to meet the objectives that are set in terms of adequacy, so -- .

Councilmember Floreen,

Well, --. [multiple voices]. Can we get it done? Our job is to deliver infrastructure I think. And make it happen through a collection of efforts and this is part of that.

Royce Hanson,

Yes. And to the extent that the infrastructure has been provided then their costs are far less. Because the level of mitigation that's required is commensurate with the amount of infrastructure that's available to serve that particular project. And one of the things that an applicant always has the option to do is to wait.

Councilmember Floreen,

Well sure. Yeah. But the question is in terms of the realism of the delivery system. Is that realistic?

Royce Hanson,

I think that the recommendations that the Board has made are realistic. They are not -- .

Councilmember Floreen,

I don't doubt that they're not cost-based.

Royce Hanson,

They're not always easy to achieve. But when they're not easy to achieve, it's because the problem's not easy to solve. And again, one can make decisions, there's a present cost calculation that anyone makes as to whether to proceed, to wait, whether the costs of providing the infrastructure are greater than the costs of waiting.

Councilmember Floreen,

Well we'll continue this as we --.

Council President Praisner,

Well, I'd like to continue into at least getting into the substance. But I do have some lights on. I'm going to call on Councilmembers who haven't had a chance to speak as yet and a couple of others so Councilmember Trachtenberg.

Councilmember Trachtenberg,

Thank you, Council President Praisner. I wanted the opportunity to make some brief remarks as the Council President noted earlier I'm going to be out this afternoon for at least an hour at a memorial service for a neighbor and friend. But I wanted the opportunity to really just make some brief remarks about the Growth Policy and I guess in a nutshell what I would say it's how I spent my summer vacation. I didn't get to go to Israel, but I got to finish all my reading on the Growth Policy. And I very much believe



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that I was elected clearly to address growth issues here in Montgomery County and I very much see this as an opportunity to get things right. And I would make reference to some of the comments that were made by my colleague Councilmember Andrews in that regard in my mind, this policy is about assuring a reasonable quality of life for our residents here in the County. But also honoring the financial responsibilities that we have here as Councilmembers and I would again go back to some of the things that Dr. Hanson said about the policy being a set of guidelines. And in my mind, that speaks to it being a road map and a strategic plan and part of that really is the intersection of the testing fees again around the policy. And I think that the adequacy of the future investments that we make here in the County, again, those investments that are specific to schools and roads, that's very much the heart of what we're talking about here and at the same time maintaining sustainable communities. So, in my mind, that's all part of what I read this summer. And I would note for colleagues that in terms of school adequacy and school tests, I want to just clarify that both Gaithersburg and Rockville have already set up stricter testing. So we're really just following form there. If we choose to go that route today. And I certainly appreciate the hard work of my colleagues on MFP. We have spent a lot of time talking about money and fees. And I also appreciate all the efforts of the PHED Committee. I haven't been at any of the Committee meetings directly, but I've been listening in on the TV and you've had just as complex conversations as MFP and I am most confident that we really do have consensus forming here within this body to take some action, decisive action and I am very appreciative of being able to participate in that and I will do my best before I leave later to let my opinion be known and I apologize that I will not be here for the entire conversation this afternoon. And I think it's time to go further.

Council President Praisner,  
Councilmember Ervin.

Councilmember Ervin,

Thank you. I appreciate your remarks Chairman Hanson because that answered a lot of the questions that I had up front. I appreciate that. But I do have one other question for you and that is what happens when the Annual Growth Policy clashes with some of the other public policies that this Council has been on record in support of, namely affordable housing and also metro policy areas and how are we going to get to the place where we understand that some of what is being proposed in the packet and by the Committees, I think flies in the face of our public policy, our stated public policy goals on affordable housing? And so we say a lot by what our actions are going to be around this Annual Growth Policy. So whatever happens today and next week, this could have a profound impact on a lot of the people who have chosen to live in Montgomery County. And for many of the people that work here who live someplace else because of the issues of affordability. So I'm really going to be paying close attention to that issue and what we're doing here could haunt us for a very long time to come. I represent a district that has that has the neighborhood of Wheaton and Long Branch and Silver Spring and I'm going to pay close attention to what we do around those metro policy areas. We have our stated goals of building housing and other



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development near metro. And what is the policy going to do to get in the way of that goal? And so you know, I do appreciate the hard work of the Committee but sometimes you know, all of our voices aren't heard at the table when MFP is meeting and when the PHED Committee has met. But I have been in close contact with affordable housing advocates who really think we're moving way quicker on some of these issues than we should because they still have a lot of questions about how does this really impact on the ground. So I think there's a lot here. I don't know why we're in such a hurry to get to the end. I think the more we talk about this, the more issues come to the surface. And so I think a lot of people are counting on us as Ms. Trachtenberg just said to go for it, but what does go for it mean? And who will be the most impacted by what we do at this table? So I appreciate your comments.

Royce Hanson,

I think that with regard to affordable housing, first of all, affordable housing under the policy as proposed would be exempt from the taxes and fees. So that, the question I think has been raised as to whether or not all projects that have some affordable housing in them or some amount of affordable housing should be exempt. Basically what the Board found, what our review of the research tends to show is that projects with affordable housing, whether they're MPDUs, workforce housing or some other form of affordable housing, tend not to pass those prices on but to discount them in the cost of the land. We have a good illustration of that in the proposal for our joint development project at Silver Place in which we're demanding that the housing developed there be 30% affordable at a minimum. In discussing the value of our land for the housing part of the development, it is crystal clear that that requirement reduces the price that would be paid for our land. So that it becomes feasible to provide the housing. There are a couple of other thing that I think are related to your question as well. One is that we are, as you know, in the process of developing a housing element of the general plan which will more broadly address both the inventory of existing affordable housing and the policies needed to increase the stock and reduce the loss of affordable housing in the County. And finally, there are basically two ways to provide the affordable housing. One is through tax expenditures, namely by reducing the tax for their provision. Or to provide the subsidy directly through underwriting the cost of some of that housing.

Councilmember Ervin,

One follow-up to that. If Silver Place weren't exempt in the enterprise zone, would it still work? Would it still be workable?

Royce Hanson,

If it weren't -- .

Councilmember Ervin,

It's exempt, right?

Royce Hanson,



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Well, only if you extend that exemption for Silver Spring. I don't think we have considered that.

Council President Praisner,  
Well, we'll discuss that when we get to --.

Councilmember Ervin,  
Just wanted to know. Thanks.

Council President Praisner,  
Okay. Good. Thank you. Councilmember Elrich.

Councilmember Elrich,  
Couple of things. Without getting deeply into my favorite topic which is the traffic part of this.

Royce Hanson,  
Bless you.

Councilmember Elrich,  
Oh, it will come.

Council President Praisner,  
If we ever get on the trolley, we can talk about it.

Councilmember Elrich,  
Once we get there. But I think a couple things, I mean, I want to make some general comments on some of the issues that have been raised. First of all is affordable housing, I mean, we don't do very much for affordable housing and we don't do very much for affording housing in the scheme of what's being lost in the County. And if you look at anything we're going to do with this Growth Policy, all we're debating is how big the trickle is going to be of affordable housing we're going to create. We're not talking under any scenario producing any kind of substantial affordable housing that's going to meet any level of the so-called crisis that's out there. So to hang this policy around affordable housing is a joke. If this Council wants to talk about affordable housing, we ought to talk about affordable housing. There are other models that work better than what this County does but what this County does amounts to next to nothing. You can turn one apartment complex to condo or you can turn one apartment complex with 37% rent increases which we've seen and you lose more affordable units than we'll produce in years of MPDU production or any kind of affordable housing production. So the day we want to have a discussion about affordable housing, let's have that discussion but let's not pretend that we're going to use this vehicle as an affordable housing vehicle because it's not. And I've spent a lot of time at Takoma Park fighting for affordable housing. I think we had a pretty effective program which will go nameless but there are ways to do this better than this County has done it, but we shouldn't use this as a fig leaf



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to avoid discussing I think some of the bigger issues. And I look forward to the Planning Department coming back with recommendations. I think the focus on preservation is absolutely critical. I think if, you know, if Council and everybody had been so concerned about this it would have been a larger part of the elements of the various master plans that have been done and we wouldn't be talking about it at this time. I also want to mention something about the \$30 million in mitigation. I mean, yeah, that's a lot of money but it is mitigation to try to maintain a reasonable level of service. So if it's too much for the developers, that means if we're going to mitigate to try to maintain a decent level of service, that means it gets passed on to the general taxpayers. We all know how hard it is in this budget and has been to meet our transportation needs in this County, whether we're talking about ride on, mass transit or even building lanes for roads. We have totally been unable to keep up with our transportation needs. So what benefit there would be of ignoring the need to address that and either, and assuming that if the developers don't do it we should pass it on to the general public. We already know we don't have the money to do it. It makes no sense whatsoever to me. Which then leads to the other third possible conclusion which is what the County has done very well which is to do nothing. You know, we all talk about all the projects we haven't built and things we haven't done and the backlog. And so if the developers don't pay for it and if the Council is not willing to pass the bill on to the taxpayers then we do what we do best which is not address it all and we don't build the infrastructure. And I think, you know, the situation is actually worse. I mean we all got this pretty little chart today. And I love statistics and so this little chart has, for example it breaks buying capacity ratios down to what 0.81 to 1.0 and 1.0 to above, 1.0 and above is red, so you know anything that red is bad and you know that if it's not red it's probably not so bad. But if you actually read the manuals, when they talk about highway capacity, that if you're at between 0.91 and 1.0, you're at capacity. You're either near or at capacity. Capacity is about 0.95. They qualify that as poor. They refer to that as unstable flow with significant delays. So the County is not simply these few red dots with all these happy orange dots in there. If we were to start grading this out, which is where are we with flows below 0.90 and where are we between 0.91 and 0.95, and what's between 0.95 and 1.0, we would get a very different picture of Montgomery County. We would look at a County that is very close to having large portions of our road infrastructure at failure. And so it's really important to think about how much additional development you're going to put on these lengths because your space is not between 0.81 and 1.0 in a lot of cases, it's very near the margin of 0.94 to 0.95. And that's the kind of data we need. I mean, this is a nice chart but I'd like to see this chart reproduced with the finer gradations in it so the Council can get a better sense and the public can get a better sense of what the real conditions are and where we're actually going. This really understates the problem. And I agree with what Phil said in the beginning, I mean, the purpose of this I think, is to try to not make things worse and to come up with a direction to go that in the long run will make things better. There's nothing we can do, at least that I've been able to figure out, about the 28 or 30,000 houses in the pipeline and I thought it was 100,000 jobs effect, one sheet I saw said 108,000 so it's more than 75 but--.

Karl Moritz,





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It was 102 including Rockville and Gaithersburg.

Councilmember Elrich,  
Okay.

Karl Moritz,  
83 without Rockville and Gaithersburg.

Councilmember Elrich,  
But in the real world it is 102.

Karl Moritz,  
Yes.

Councilmember Elrich,  
Wherever it's going to come from. So that's an awful lot of jobs and an awful lot of housing units that this Council has not raised the money for. Will not have, those jobs and housing will not generate the capital to produce the infrastructure they need to sustain it which means this Council and future Councils is going to have to try to find the resources out of an already scarce budget to accommodate this next huge influx of jobs and housing and what we're talking about is just putting conditions on those jobs and housings that comes afterwards. So I think it makes sense for us to be more conservative and more careful of what we do in the future because we've got a fairly large torrent of development coming at us and if the recession kicks off, it will come slower and if when we recover from the recession, that torrent will come faster. But unfortunately, we're not terribly well prepared to deal with it if it comes slow or fast. And my reading of the state budget and I think we all know the number, the \$40 million transportation number that the governor has mentioned is actually only \$150 million, 250 is for maintenance.

Councilmember Floreen,  
It's less than that.

Councilmember Elrich,  
So, it's even less than that. And as – said, \$150 million is one and a third interchanges spread across the state of Maryland. So not only are we going to be struggling to meet the infrastructure needs, we're not going to get much help from the state. So I think it makes sense to take a conservative approach on this and I forward to the traffic discussion when it comes.

Council President Praisner,  
Okay. Councilmember Leventhal.

Councilmember Leventhal,



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First of all Madam President, you've worked very, very hard on this. I think it's okay if we have opening statements before lunch. I know you're eager to get into the meat, but you know, we all have things we want to get on the table so we're going to make progress.

Council President Praisner,  
I let it happen George, so it's okay.

Councilmember Leventhal,  
I understand, you know, you'd like to see us get right into it. But Councilmembers have been waiting for a long time. And so we're getting these opening statements out of the way.

Council President Praisner,  
Right. Having made them, I hope there will be fewer intermediate statements and very limited closing statements next week.

Councilmember Leventhal,  
Well, let me say this, I think the extent to which we engage in lengthy rebuttals and extended debate depends on how much self-control we exercise in the first place. So I, you know, when you're new to a situation and you want to have something described to you with respect to a political situation, the first question you want to know is who are the good guys and who are the bad guys. And I want to tell you this, there are no bad guys in Montgomery County government. None. We have an outstanding County Executive who's devoted his career to public service. We have nine hardworking serious, conscientious public servants on this dais. There are no bad guys in Montgomery County government. I've been looking for the corruption I tell you that my constituents keep telling me is out there, and it isn't out there. We have clean government in Montgomery County and we have very serious, conscientious public servants trying hard to do the right thing and balance competing interests. I've, the Council President knows I've been turning my light on and off trying to debate whether I had anything constructive to add. I thought Councilmember Ervin's opening comments were so much on point. Let us not deceive ourselves. What is going to be the effect of this Growth Policy on affordable housing? It won't be good. It won't be good for affordable housing. Now affordable housing is one among many things that we look at. And I, you know, again I turned my light off after Mr. Andrews spoke because I agreed with everything Mr. Andrews said. Yes, we want to match, we want to utilize a policy to match and stage available infrastructure to support new development. We want to do that. That's a goal that we all share. And I appreciate the hard work of the Planning Board. We have got a lot of dedicated public servants who put many, many hours into this and unfortunately, we're going to have many more hours before it's done. But I question some of the assertions that are continually made. This assertion that was glibly made here yet again about, don't worry about passing on the cost to homebuyers because, and we've heard this again and again, all it will do is devalue the land. Well, let me say two things about that. First of all, many housing developments, the developer already owns the land. So you can't devalue land you've already bought. And that's true



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at White Flint to cite just one example and there's many other examples. I'm talking about – Plaza. Okay, so there are many examples where you can't just say well the seller of the land will just eat it. Too bad for that seller, that big wealth rich landowner, has all those acres. He'll just have to accept less. Because in many cases the land has already been purchased. So it is going to be passed through to somebody. The effect of dramatically higher costs is going to be to make housing in Montgomery County more exclusive and more expensive. That is going to be the effect of whatever housing stock comes online under this policy. That doesn't mean we shouldn't adopt it, but let's be real about it. The second issue about the devaluation of land is, you know, maybe I've been missing something, I've only been on the County Council for five years, but it seems to me that we fund everything in County government on our assessable tax base. So that if our goal is to devalue land and make it less valuable by making it less buildable, have we calculated the effect of that on property taxes which is our number one source of revenue. So you know, these questions come up, I know the Council President has tried very hard to assist the process and be orderly and say get your questions in early and we've all tried to do that to some extent but new questions arise. And so I would like to know now that the question has been put back on the table again, happy day, land won't be worth as much in Montgomery County. Have we netted out the effect on property tax revenues of all of these impact tax revenues that we're going to reap that's going to make the land more expensive, excuse me, that's going to make the housing more expensive and the land less valuable. We've been confidently assured by our distinguished Chairman, good news, the land will be less valuable. Well, that doesn't sound like good news to me since we depend on revenues from the value of that land. And my last point is the other issue that I think has continually escaped us in this discussion. We on this dais, and all of us who participate in COG, our Vice-President is going to be the incoming President of COG and again, and again, and again, we hear these assertions from Steven Fuller in particular and other forecasters that no matter what we do the nation's capitol region is going to increase in population significantly. And so are we going to, let me just say again, I mean, as we try to slay this horrible growth monster, you know, God forbid we should have 100,000 new jobs. Adult human beings need jobs. The fact that 100,000 new jobs may come into Montgomery County I don't think is something to be dreaded. Adult human beings need jobs and all human beings need housing. So let's just keep a sense of perspective here. Jobs and housing are not in and of themselves things to be feared or dreaded. Now, should infrastructure contribute, should new development contribute to the cost of infrastructure? Yes it should. And I'm willing to entertain an increase in impact taxes and the question is what's a reasonable level? But let's try to avoid accusing each other of being a joke. Let's try to avoid accusing each other of not doing anything in this County. My god, we impose all kinds of costs and taxes and tests on development. We do. To say that we've done nothing to build infrastructure is not, is not a fair description of the efforts that have been made up to now. Let's stop poor mouthing the government of our own County. Let's respect each other and try and reason through this. We've got competing objectives. They're all valid. And let's try and conduct this debate in a way that acknowledges that we're all wrestling to achieve some very complex goals.



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Council President Praisner,

I see no more lights. So, no, we're not going to change that. Let's, no it's not time for lunch. I know you haven't Councilmember Berliner and I appreciate that. Can we start please? I'm not going to say can we, we will start by looking at the public school adequacy test and I'm going to turn it over to staff to walk us through the Committee recommendations. What I'd like to do is do what we did last week is to discuss the big packet agenda items 6, 8 and then we have an addendum which is, provides additional information based on the County, excuse me, the Superintendent's CIP that is recommended which we will deal with, the Board has to deal with and then will come to us in the spring for deliberations through the Executive's capital budget in January and the Council's actions. What I'd like to do is have staff lay out each of the issues associated with the public school adequacy test to the extent there are Committee recommendations and see if there are any motions for modifications associated with them. Mr. Orlin.

Glenn Orlin,

Okay, thank you. Unfortunately on this first one, there isn't a Committee recommendation.

Council President Praisner,

Well, --.

Glenn Orlin,

But I'll go through, it's a bad way to start but this is where we have to start so we'll do it.

Council President Praisner,

Well I thought there --.

Glenn Orlin,

Well, no, not on this one. There is some agreement.

Council President Praisner,

There is on one piece I thought.

Glenn Orlin,

On one piece of it there is, yes. Let me just say what they are and you can decide how to characterize it. Ms. Praisner is recommending for the school test that it be a four year test starting now. So it would go through whatever capacity is available by September 2011 would be counted and the enrollment at that time would be is what that's compared to. She is recommending using 105% of program capacity as the threshold for requiring a school facilities payment and recalling all of these discussions, we're talking about MCPS program capacity and we're talking about the total for each cluster. And no borrowing across clusters at any level. So the results of her recommendation, well' that's the first part of it and the second part of it is if a cluster at any level reaches 120% threshold, then that cluster would go into a residential moratorium. The results of



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that option based on the school system's newest enrollment forecast and Bruce may want to find his way up to the desk at this time, is that ten clusters would require the school facility payments, or residential development proposals require school facility payments for development to occur in those clusters including all three grade levels for Clarksburg and two other clusters, Einstein and Kennedy would be in a residential moratorium. Councilmember Elrich also recommends a four year test at the same time. Enrollment capacity comparison of September 2011 and also recommends 105% as the threshold for a school facilities payment. Where he differs from Ms. Praisner is the cut-off for residential moratorium, instead of 120% would be 115% and the results of his particular recommendation would be that six clusters would require payments to go forward and I believe six other clusters would go into residential moratorium and that's option, well, I refer to the packet as to where you can find the details of that in the packet. And then finally Ms. Floreen's proposal, Ms. Floreen recommends a five year test which would go into effect next July. So in her recommendation you would be comparing enrollment to capacity in September 2013. She recommends using 110% as program capacity threshold for school facility payment and 135% as the threshold for residential moratorium. Under her scenario seven clusters, I say here, could require payments, I'll come back to that in a second, including all three grade levels in Clarksburg and the Kennedy cluster could go into residential moratorium. And the reason why these are could rather than woulds, is because, and under her proposal the Growth Policy wouldn't go into effect until next July and so any actions the Council would take over the course of the next seven months or so in this next CIP could very well change the results of this scenario. So that by the time you get to July, many of the clusters that are listed as being, requiring a payment and the cluster that would go into moratorium may no longer be in that condition. Before you go into discussion, just again, I want to refer you back to the addendum. We have looked very briefly at the Superintendent's request.

Council President Praisner,  
Addendum number 6, 8?

Glenn Orlin,  
6, 8, yes. It's the first page of that and our initial take on it, and again not a detailed analysis yet, but that many of the clusters, particularly in the northeast consortium, all of them probably and most of them in down county consortium, those clusters that would either trigger a school facility payment or a moratorium depending on the alternative you're looking at probably would not occur by July if these projects were approved. However, the other clusters that are effected, BCC, Wooton, Clarksburg, maybe one or two others, might, likely would not be effected by what the Superintendent's request would suggest. And that's where we are.

Council President Praisner,  
Okay, question I had though before I call on folks whose lights are on. The question that I have relates, your analysis of the Superintendent's recommendations only relate to,



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would be true whether it is four or five or six years because the CIP projects are within the four year timetable.

Glenn Orlin,  
Most of the projects that are recommended by the superintendent would be finished by September 2011, that's right.

Council President Praisner,  
So therefore, that variable is not affecting any of the options before the Council likely.

Glenn Orlin,  
These are general statements.

Council President Praisner,  
General statements.

Glenn Orlin,  
I think there are a couple of the additions which are recommended to be approved 2012 or 2013 but most of the ten projects that have listed are 2011 completions.

Council President Praisner,  
Okay.

Glenn Orlin,  
As proposed.

Council President Praisner,  
And the issue of enrollment to capacity questions, the percentages, the thresholds relate to the residential moratorium, the 115 or the 120 or the 135, how is that affected?

Glenn Orlin,  
Same thing. Several of the areas that would trigger, well, let's just take Kennedy for example. Kennedy, under the Superintendent's request, you would not trigger a residential moratorium on 135% for sure. Under 120 or 115, I'm not sure, Bruce is trying to figure this out as we speak. Do you know? I'm not sure.

Council President Praisner,  
That was my only concern when I saw the addendum is the addendum had general statements and given the fact that there are multiple scenarios, it might have a variation depending upon which scenario. So I don't want the Council as it goes through these options not to understand that once you apply those options to the actual, whatever options are used may have a result. I don't want somebody coming back next week and saying but you said no one in the northeast consortium and now you're talking about still something in the northeast consortium. So I want to make sure that caveat is a legitimate caveat to continue to have. Correct?



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Glenn Orlin,  
Correct.

Council President Praisner,  
Okay. Alright. I have a series of lights dealing with school issues. I think it would be better again trying to deal with this, there are three separate issues it seems to me that would start the process. One is a four year, five year or six year test. Second is the enrollment capacity using a percentage of program capacity. There are three, there is a Committee recommendation on that for 105% of program capacity. The issue is the threshold for a moratorium that is a difference.

Glenn Orlin,  
Can I correct something that I just said? The Kennedy clusters in the down county consortium I believe.

Council President Praisner,  
Yes.

Glenn Orlin,  
And what I said in the packet was that northeast consortium is not likely to have any which would be in moratorium or require school facility payment. That's not true. In the down county consortium, what I said was that many but not all of the base areas in the down county consortium would likely not have to make a school facility payment or a moratorium.

Council President Praisner,  
Alright. That's the kind of caveating, that's all I was trying to do. [inaudible]. You just reinforced that for me. Again what it seems to me is you start with four, five or six years. You look at the issue of we already have a Committee recommendation on 105% of program capacity. So we'll start with that point. Then you have the four, five or six years. Then you have the threshold issue. Then you have, you also have a Committee recommendation to start the Growth Policy now versus starting it in July of 2008. So there is a Committee, there are some Committee recommendations. There are things that are not. What I would kind of like to do with the lights, unless they are questions rather than motions, I would entertain questions first and then what I thought we would do is given where there are Committee recommendations, work from those to see if there are any other motions associated. So are there any questions? Are any of the lights related to questions? Councilmember Floreen.

Councilmember Floreen,  
Thank you Madam President. Glenn, I was trying to figure out.

Council President Praisner,  
Don't leave Glenn. Don't leave.



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Councilmember Floreen,  
Einstein, is there anything that's being proposed that would relieve the challenges that the Einstein cluster currently faces?

Glenn Orlin,  
There is. Bruce you want to weigh in on this?

Bruce Crispell,  
The reopening of McKinney Hills is recommended for August 2012.

Councilmember Floreen,  
2012. And would that relieve the elementary school issue then?

Bruce Crispell,  
Yes. Well. [inaudible]. Again depending on how tight the test is, what percentage utilization you choose to use.

Councilmember Floreen,  
Okay. So you'd have to rerun and that's a potential improvement. As I understand Superintendent is asking for what \$280 million? In the capital program more than currently budgeted?

Bruce Crispell,  
Yeah, something like that.

Councilmember Floreen,  
Something like that. So it is a big number.

Bruce Crispell,  
Right.

Councilmember Floreen,  
Okay. We'll deal with that in the spring. Just some other things that are related to this issue. We talked in Committee, and I think we mentioned last week the issue of capacity, a program lock basically and, --.

Council President Praisner,  
Yeah, that --.

Councilmember Floreen,  
Capacity, I wanted to understand.

Council President Praisner,  
Right.





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Councilmember Floreen,  
Where we are on that.

Council President Praisner,  
At two years.

Councilmember Floreen,  
I think the agreement understanding would be that whatever the programming – .

Council President Praisner,  
Program capacity would be --.

Councilmember Floreen,  
In place as of the.

Council President Praisner,  
Right now would stay for two years.

Councilmember Floreen,  
So that would be related to.

Council President Praisner,  
Unless there is new capacity.

Councilmember Floreen,  
So that would be the issue associated with the service subset of the different starting times. Is that how that would work? Well, if we were to impose this as of like now it would be whatever program decisions have been made by the school system as of this moment or December 1st or whatever, would be the ones that would be assumed undisturbed for the next two years. Is that correct?

Glenn Orlin,  
Right.

Councilmember Floreen,  
Okay, and with respect to any additional capacity going on, being provided, that would adjust the numbers appropriately?

Glenn Orlin,  
Yes.

Councilmember Floreen,  
Okay. Then my third question related to this had to do with the schools facilities payment. One thing I haven't understood and worried about a little bit, maybe, I looked



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at the resolution but I couldn't tell for sure how this had been addressed. When would this schools facility fee be assessed? At preliminary plan?

Unidentified,  
Building permit.

Karl Moritz,  
You would pay it at building permit.

Councilmember Floreen,  
But how would you know, the guy at DPS know what the number would be?

Karl Moritz,  
It would be, excuse me, it would be determined at subdivision.

Councilmember Floreen,  
So it would be assessed at that point.

Karl Moritz,  
If the schools facility payment was going to be required and then at building permit it would be paid.

Councilmember Floreen,  
So you would say, so you would say as of say December 2nd, that the schools facility payment is, I don't know, \$50,000 and you would assess an amount at that point based on the fees and the fees numbers in effect right this minute?

Karl Moritz,  
Right.

Councilmember Floreen,  
To be paid whenever they got to building permit?

Michael Faden,  
It would be a condition of subdivision --.

Councilmember Floreen,  
Yeah, okay, I just wanted to get some clarity on that. I hope that the resolution makes that clear. I don't think it is entirely clear.

Council President Praisner,  
Well it may be in the legislation, not in resolution from a standpoint of fees.

Councilmember Floreen,



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Well, I don't know but I would want that answer to be clear because one of the big issues that we hear is a lack of predictability in how these numbers are flowing. And admittedly the taxes generally are applied to a lot of things and evolve. But the schools facility payment is a unique element that lacks some clarity in its assessment. So that would be identified as an obligation and assessed the dollar amount based on the project that was approved would be identified as the number to be paid when the project went to building permit. Is that correct?

Karl Moritz,  
That's right.

Councilmember Floreen,  
That's how you would handle that. Okay. I just wanted to get clear on that.

Michael Faden,  
If you want to do that, you probably will need to say so in the Growth Policy because I think the way it would work now is similar to an impact tax in this sense. The developer would know his conditions of subdivision which would be to make the payment.

Councilmember Floreen,  
Right.

Michael Faden,  
But the amount of the payment would be calculated at the time the payment is actually made. In other words when the developer goes to take out their building permits and the amount may have changed since the subdivision approval. So if you want to freeze the amount at subdivision approval, we'll need an amendment to clearly do so.

Karl Moritz,  
That's a good point.

Councilmember Floreen,  
Well, so that if that proceeds, I would recommend that we clarify that in the down county.

Council President Praisner,  
Well, that's something that the Committees haven't discussed. It probably would need to be clarified but it's a good point to raise and we can clarify that.

Councilmember Floreen,  
It would be for now it seems to me. Okay.

Council President Praisner,  
Okay. Alright, I know that, okay, Councilmember, Vice-President Knapp?



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Councilmember Knapp,  
Thank you Madam President, the Board of Ed, the Board of Ed's recommendations were?

Bruce Crispell,  
They supported the Planning Board recommendation which was for 110%, five year test for school facility payment and 135 --.

Councilmember Knapp,  
110% of program capacity.

Bruce Crispell,  
110% of program capacity --.

Councilmember Knapp,  
Five years.

Bruce Crispell,  
For five years testing and then 135% would throw a cluster into moratorium.

Council President Praisner,  
And also that that fee be available to be used anywhere in the County.

Bruce Crispell,  
Yes. The school facility payment to be available, now, if the school facility payment is eliminated, then they add it in another resolution that they would want the moratorium to start at 110%. Because there was a Council recommendation to not have a school facility payment.

Councilmember Knapp,  
Staff recommendation.

Bruce Crispell,  
Exactly. Right. To not have --.

Councilmember Knapp,  
Touchy, touchy.

Bruce Crispell,  
Now one thing I would say about the 110%, why I think the Board supported that is, when you get below that level in a cluster, particularly at elementary schools, you could have a collection of elementaries that are slightly over capacity, maybe the whole cluster could be 105, 106% over capacity, but at any individual school you might not pass the threshold where we would be asking for an addition project because it wouldn't, traditionally we have asked for additions when it is most cost-effective, it's four



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rooms or more, so a school has to be 92 students over or more as we currently plan additions. It gets very expensive to do really small one and two room additions. So I would just mention that about the 105% test, that you could have a situation where a cluster fails the 105% test but there may not be any given school that we could up with a recommendation to do an addition on because we don't have that much deficit at any one school. That's why the Board supported 110% because of that dilemma.

Royce Hanson,  
This is also why the Board recommended – .

Councilmember Knapp,  
Hold on, just second, I just want to try to understand this, if you could. So, saying that 110%, that if a school is 110% of program capacity, then generally speaking most of the schools will then be enough over capacity to warrant at least a four-room addition.

Bruce Crispell,  
If the cluster is 110% or more, when you aggregate all the elementaries capacities compared to enrollment, then it is fairly certain that some school in that group needs an addition. But if you say it's 105%, then there can be a case where you don't have any one school that's more than, that's 92 or more over its capacity. If you think about it, if you take a school of 400 enrollment or capacity, 10% of that is 40 students.

Councilmember Knapp,  
Right.

Bruce Crispell,  
40 students over. And 5% of that is only 20 students over its capacity. So that the lower you go down in that school test, I'm just advising you, the closer you get to situations where we may not be asking the Council for funding for a capital project that would get it out of the test failure.

Councilmember Knapp,  
So the risk you run at 105% is you end up either doing a lot of expensive smaller projects or you don't do them, you just kind of hold until some point in time that you exceed capacity by enough to then warrant going back and doing a larger project.

Bruce Crispell,  
Yes, or enrollment comes down. I mean, the school enrollment is not a --.

Councilmember Knapp,  
Right.

Council President Praisner,  
Or you make a cluster change within the cluster.



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Bruce Crispell,  
Cluster change, right. So it is something to consider I think.

Councilmember Knapp,  
Okay, now sorry.

Royce Hanson,  
Our staff had consulted with the school staff in deciding where this point of requiring the facilities payment should kick in and we think that's a prudent level at which to put it.

Councilmember Knapp,  
Which? Which is a prudent level?

Royce Hanson,  
110%.

Councilmember Knapp,  
Okay.

Royce Hanson,  
That that makes sense in terms of the practicalities of fixing the problem. The other thing that I think I want to mention to you is that in administering the public facilities ordinance, school tests are inherently more problematic than transportation tests in part because they are so much easier to deal with. We not only have an obligation to educate every student, but boundary changes and other means are available to deal with it without a great deal of new construction in some cases. So I guess our advice to the Council on this is to adhere to the recommendations of the Board and the School Board and to be cognizant of the characteristic of this test.

Councilmember Knapp,  
Okay, now that's helpful. Thank you. I wanted, I've got a couple, jump to the number of years that we have assessed because if I looked at the charts that were provided, I appreciate people providing those, back starting with Circle 42, if you look at the percent of program capacity, and actually if you hold constant, pick whatever if you want, pick 2011, 2012, it is interesting it would be intuitive that the more years you looked at, you would actually have fewer schools that would be inadequate when in fact it appears to be the other way around.

Glenn Orlin,  
Yeah. It doesn't work the same way as the transportation test.

Councilmember Knapp,  
Okay.

Glenn Orlin,



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Transportation is at least as tight or tighter the closer in years you pick for the test. But for schools it is not because it's two things changing. For schools, the enrollment generally, at least the last several years and continuing is going to grow.

Councilmember Knapp,  
Okay.

Glenn Orlin,  
Capacity certainly does get added but you can, probably most clusters are in a situation where between years four and five, or between years five and six, there may not be any capacity being added in that particular cluster but enrollment could grow.

Councilmember Knapp,  
-- in the enrollment.

Glenn Orlin,  
So you could have a situation in four years where you compare enrollment to capacity and we're fine but in five years, or maybe in six years, we're maybe just barely fine in year four but we're fine, but in five years or six years we are just barely not fine because enrollment crossed that point.

Councilmember Knapp,  
Okay. Alright.

Glenn Orlin,  
Now in the other situation is if there happens to be capacity being added, an addition or a new school in year five or year six, this is the opposite because the slug of capacity that is added is generally much bigger than whatever the incremental growth is in the enrollment over those couple of years.

Councilmember Knapp,  
Okay. That explains that good. Thank you. And then subdivision. We had this conversation about what's in the pipeline. And so I just wanted to get a definition of what is the pipeline and when the assessment will be done at subdivision. So, for example of that 25,000 plus things that we say are in the pipeline, those aren't all going to go through subdivision, those are just looking at various master plans and other activities or are they --.

Karl Moritz,  
Those are projects that have gone through subdivision.

Councilmember Knapp,  
Okay.

Karl Moritz,



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Those have gone through subdivision.

Councilmember Knapp,  
Good. Okay, that's fine.

Council President Praisner,  
And they wouldn't be paying the impact taxes and fees, some of the fees that we're talking about. Not all of them.

Michael Faden,  
They all pay the impact tax.

Council President Praisner,  
At --.

Michael Faden,  
No, at, unless you do it very deep grandfathering, it would almost, for almost all of --.

Councilmember Knapp,  
They would pay at the new rate.

Michael Faden,  
Yes.

Council President Praisner,  
At the new rate.

Councilmember Knapp,  
Whenever they go to building code.

Council President Praisner,  
Right.

Councilmember Knapp,  
Okay.

Council President Praisner,  
Because they pay it at building permit.

Michael Faden,  
Right.

Council President Praisner,  
Which they haven't pulled as yet.





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Michael Faden,  
Right.

Councilmember Knapp,

Okay. So that's, alright, so walk through that a little bit. So we've got, I can pick an example of the trio is, look at a place like Clarksburg. So we're going to get to a point sometime in the spring where presumably a plan of compliance will have been approved, or all of the, the site plan will have been approved which will then get you to presumably the ability to then move to the next step. Many of those, many of the elements in Clarksburg have already gone through subdivision. And so would they, would that then, since Clarksburg under virtually any scenario is in moratorium, would that trigger schools facilities payments and higher impact taxes for that to proceed or would it end up as we were just talking about, they would be subject to the lower impact taxes and how would those pieces work?

Karl Moritz,

Any project that has gone through subdivision including the Clarksburg ones that you have mentioned have had their adequate public facilities test passed. So, the schools facilities payment is part of the adequate public facilities test and so those projects would not be subject to the school facilities payment. The way the impact tax is currently structured, for your consideration, those projects would have to pay the higher impact tax because there is no large grandfathering provision that would exempt projects that have already been approved from paying the impact tax. So they'd, on the day they go in to get their building permit, whatever impact tax is in effect that day is the impact tax that they would pay.

Councilmember Knapp,

Okay. So the impact tax would increase but it wouldn't effectively put that community into moratorium. Because this gets to the point that – .

Council President Praisner,

Well, not for the development that's already been approved.

Michael Faden,  
Right.

Council President Praisner,

They already have their APF approval.

Councilmember Knapp,  
Right.

Council President Praisner,

So all they have left, not that it's, I don't want to make it sound like I'm saying it is insignificant, but the piece they have left is the impact tax because they haven't pulled



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the building permit. But any of the actions that we're doing are, beyond that issue of impact taxes relates to new approvals and new process, not for anybody in the pipeline.

Michael Faden,  
Right. And there's only, one more wrinkle with Clarksburg especially because – .

Councilmember Knapp,  
There always is. [laughter].

Michael Faden,  
A lot of those developments have major commitments in terms of adequate public facilities transportation improvements which will be creditable against their impact taxes so the actual net increase in impact, and they have to do those roads and stuff anyway, so the net increase in impact taxes might not be as large in reality as it appears on paper.

Councilmember Knapp,  
And that's, that's, I mean, there are a lot of potential policy pieces collide here. That's why I want to make sure I understand it. So then assuming we resolve whatever development -- pieces out there, we resolve whatever the site plan issue associated with the plan compliance are, once we have approved, once that gets through, then the development that has already been approved can proceed under what is being proposed in front of us right now. With the exception of paying a higher impact tax.

Karl Moritz,  
That's correct.

Council President Praisner,  
Which they receive credits for is what Mike was talking about.

Michael Faden,  
Transportation impact tax but not the school.

Council President Praisner,  
Not the school.

Councilmember Knapp,  
Okay. Just checking. Making notes here. Four to five, six year test, hold on, I'm just, I was trying to make sure you --.

Council President Praisner,  
Take your time, take your time.

Councilmember Knapp,



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Enrollment capacity. And then Glenn or between Mr. Orlin and the Council President, you talked a little bit about the, starting the policy now versus waiting until after we have concluded our budget process. I know the Committee talked about that a little bit. But somebody walk through kind of the ramifications of one versus the other.

Glenn Orlin,

First of all, let me point out that the Planning Board and the Board of Education's recommendation for a five year test actually starts now, so it is actually a different, it's one year less than, it is in between where Ms. Praisner, Mr. Elrich is on one hand and where Ms. Floreen is on the other. And it would look at 2012. Karl, do you want to talk about what would happen if the Growth Policy went into effect in terms of approvals.

Karl Moritz,

Well, sure. If the Planning Board and Board of Education's proposal was adopted and that goes into effect now, well.

Glenn Orlin,

Actually the question from Mike is, you have the resolution that you adopted back in January and reaffirmed in August, in July which I believe applies this test to any subdivision that's been applied for.

Michael Faden,

It can. It gives the Council the option in this upcoming Growth Policy Resolution to apply the test to any subdivision for which the application was filed on or after this past January 1st. But that's a decision you will need to make.

Councilmember Knapp,

Okay.

Michael Faden,

--that answered the question.

Councilmember Knapp,

Yes. So practically from, you're going to do the CIP in the next six months and so what differences, how would we approach the CIP differently if we waited and put this into effect June 1 or July 1 relative to doing it now?

Glenn Orlin,

Probably no different because if you put the Growth Policy into effect now it will have consequences which either requires a school facility payment or moratorium which, the only way you could get them out of that situation is if you do an amendment to the CIP you know, sooner than waiting for the full CIP. But for the full CIP we would just look at what the needs are generally, growth and otherwise, and if there is a particular project which is related to the ceiling for growth, I keep calling it ceilings, the level of growth that could be allowed, or whether it was pass or fail, we would note that for you. And you



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would make decisions however you think it is important to make it. And at the end, we will recalculate what you've done both on the school side and the transportation side, and come back with a new, the Planning Board actually would do this, evaluation of that in I guess it's June or July.

Councilmember Knapp,  
Okay.

Council President Praisner,  
It would seem to me that the difference is if you use effective now, that's the conditions as exist now, the capital budget hasn't been adopted yet.

Councilmember Knapp,  
Right.

Council President Praisner,  
You are, if you wait until after the capital budget is adopted, you're making decisions now on a Growth Policy with an effective date of the capital budget, which we don't know what we'll do. So it is either way, you have the issue of what we're going to do in the capital budget but the notice to the folks is what exists right now when they come in.

Councilmember Knapp,  
Right. Okay. And then my last question is, we have this discussion of 105 to 120% for a moratorium or 110 to 135%. Can someone talk about that range in between. How did we get to the 15% range from 105 to 120 versus looking at the 25% range of 110% to 135%.? Are there any consequences of looking at a smaller versus looking at it larger?

Glenn Orlin,  
Well, the Board would start with 110, 135.

Councilmember Knapp,  
Okay.

Council President Praisner,  
It triggers certain implications differently.

Royce Hanson,  
Well, the, and I think we have to look carefully at what the consequences would be of lowering the moratorium threshold from 135 to 115 or 120. As I indicated earlier, one possible consequence, and I can't say for certain on this, depending on the clusters that are affected, it may place a residential development into moratorium without regard to whether or not a transportation test is passed or not.

Glenn Orlin,  
All your questions are --.



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Council President Praisner,  
But that's true right.

Royce Hanson,  
That's true now --.

Council President Praisner,  
It just because of capital budget, no school has, no cluster has --.

Royce Hanson,  
Not at all.

Council President Praisner,  
Been in that situation but you do have two separate tests right now.

Glenn Orlin,  
Right.

Karl Moritz,  
In general, the Planning Board picked 135% and other points I would say reflect a determination of the effectiveness or the utility of the moratorium as a tool in the school test. And in the case of the Board's recommendation, they felt that the moratorium was sort of a last resort kind of tool. That you impose it only in the areas that are extremely bad off because they felt that because of turnover of existing neighborhoods and other effects, new growth has a certain proportion of an effect. Whereas other folks I think would come down and say well the moratorium, well I don't want to I guess speak for other people but I think that's sort of the range of options or, as a result of that determination.

Glenn Orlin,  
It is likely that these thresholds will have, if anything, just a short term effect because it's relatively, I know Bruce wouldn't say so because living in the school area, but it is relatively easy to plan and fund and build a new school or an addition compared to transportation and so, and since the school system has been very diligent about trying to address capacity needs first, that's always been the first of their priority list.

Council President Praisner,  
After public safety.

Glenn Orlin,  
After public safety, that's right.

Councilmember Knapp,  
Health and safety.



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Glenn Orlin,

After public safety, is that they usually come forward with recommendations just as the superintendent did yesterday which would resolve, as it turns out, many, many of the problems that we have identified here. For example, if you adopt a four year test now or five year test now versus a five year test in July, a five year test now some areas will require school facility payment. But if those developers just wait until July and then not have their subdivision approved until then, then they won't have to pay a school facility payment. So it's, there is this kind of thing that they are going to be looking at as their making their decisions in terms of when they want to go forward.

Michael Faden,

Which is not a long wait given the time it takes the Planning Board to process a subdivision. [multiple speakers].

Royce Hanson,

Adopt a Growth Policy.

Councilmember Knapp,

Okay. And we haven't done the amount of facilities payment yet. We'll come back to that in a minute. Okay. Thank you.

Council President Praisner,

Councilmember Berliner.

Councilmember Berliner,

I turned off my light Madam President because I'm okay.

Council President Praisner,

Okay. Councilmember Leventhal.

Councilmember Leventhal,

Okay. The reason we need to pass a Growth Policy in 2007 is not because the Growth Policy in 2003 was so bad. The reason we have to adopt a Growth Policy in 2007 is because the adequate public facilities ordinance calls on us to revise the Growth Policy every two years. So what we need to try to do together is work through this in a way that generates some basic understanding and doesn't create jackpots or set any of us up to be attacked later. I am willing to raise impact taxes for school construction. Let me make it very clear for the record despite today's Washington Post that says that the 2003 policy eased restrictions on growth, there was no school tax, there was no school test prior to 2003. They didn't exist. In 2003 the Council for the first time imposed a school test and a school tax. And.

Glenn Orlin,

There was a school test prior to 1987 but it was one that was very mild.



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Council President Praisner,  
Well, there was no school facility payment fee.

Glenn Orlin,  
But Mr. Leventhal said there was no school test. There was a school test.

Council President Praisner,  
Well, but there was a school test.

Glenn Orlin,  
But it was one that everyone always passed.

Councilmember Leventhal,  
Much tighter schools test was imposed in 2003.

Glenn Orlin,  
That's correct.

Councilmember Leventhal,  
And furthermore we learned at our last session that although the facilities payment charge was adopted for the first time, no application has been subject to it. So we don't know in future, I understand we're going to tighten the standard and I'm in favor of tightening the standard, but we don't know in future what will occur since presumably we might have assumed four years ago that proposals, projects would, we wouldn't have adopted the facilities payment charge if we didn't think some folks would be subject to it. It turned out they were not, they were not subject to it and congratulations to the County Council, we were able to adopt a CIP that funded school construction which was exactly the hope of those of us who were here five years ago that we would in fact invest in infrastructure. Good for us. We did that. So my question now is, and I'm sort of understanding, I've been following Mr. Knapp's questions, the test is basically imposed at the beginning of the process and the tax, the impact fee is imposed at the end. So not only did we in fact tighten restrictions on growth with respect to school capacity in 2003, not as the Washington Post today says eased restrictions on growth, we tightened restrictions on growth with respect to school capacity, but we can now tighten them further for those very projects in the pipeline. Because if I'm following this correctly, the impact tax rates that we adopt now will apply because the taxes are paid at the end of the process. And at building permit, the projects are subject to the tax rates that we adopt now which gets back to my first point. We have to do this every two years. So I say to my friend, the Council President, you know, we will come up with something and I'm willing to vote for something, understanding that we'll have a chance to look at it again in two years and we will look at the effect on the economy, we will look at the effect on the housing stock. And so the question is, are we able to get together here on something that we will basically try for two years which is what the law calls on us to do, and then modify it, which is what we are going to do right now if we thought that the



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impact taxes which we imposed for the first time for schools in 2003 could be a little higher, I'm willing to raise them, and they apply to all those things that are in the pipeline. We can look at them again in two years, so now, my question is why aren't we closer to each other? Why is it necessary, with all due respect to my hard working colleagues, that we have a one, one, one recommendation from the PHED Committee? And I'm, I've followed Mr. Knapp's questions but I'm still not clear and maybe the sponsors of these different alternatives could just very clearly without kind of imputing evil motive to anyone explain what's the difference and what is the benefit and why does the distinguished Chair of the Committee and President of the Council believe that we need a different threshold than what the Planning Board and the School Board recommended? Why does Councilmember Floreen believe that we need a different effective date than what the School Board and the Planning Board recommended and why does Mr. Elrich believe that we need a different level since what we are going to do will be in place for about two years? We are going to raise taxes on those things that are already in the pipeline. I just, I'm searching now after many months of not doing this.

Council President Praisner,  
I'll be happy to comment from my perspective.

Councilmember Leventhal,  
To bring us together because it seems like it would be easy enough, as Mr. Knapp was suggesting, to all of us hover around and land where the Planning Board and the School Board did. And so –

Council President Praisner,  
I'll be happy to speak personally on my perspective. And my perspective is that it is as I said a Growth Policy that regulates the timing of growth in relationship to the availability of infrastructure and facilities. And so the question is a confidence level of the capacity of being able to marry those two. And from a standpoint of the school test, I think getting to 135% is too significant a number of increase above a program capacity than I'm willing to tolerate from a standpoint of imposing a residential moratorium. Recognizing that the likelihood of residential moratoria related to schools is less one that we have experience with than with transportation and recognizing that we are moving to program capacity in the same way that the school system does. I still think this is a question of marrying capacity that exists or is likely to exist and making sure that we have a confidence level of the availability of that infrastructure in the timeframe that we're talking about. So the percentage thresholds that I was looking at are tighter than what was proposed by the Planning Board and yet are over the threshold level of the 100% when a school facility test would take place, which is what other individuals have recommended or a moratorium at 100% which the community has argued for and with due respect to the community, I think program capacity in and of itself raises issues of extended flexibility that are there in schools that are not in transportation. So it is a judgment call as to what numbers you feel comfortable with and in my view, those are the numbers I feel comfortable with. Councilmember Elrich, you are the next to speak. So maybe you might want to roll your comments that you were going to make or





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whatever points you had into that response since Councilmember Floreen is going with, well, you're going with what was recommended by the Board. The question was why are you recommending something other than what the Board and the Planning Board have recommended. So Councilmember Elrich I think is the other Councilmember that has that question directed at him. Marc?

Councilmember Elrich,

I share a lot of the concerns that you just raised. I think about, first of all as a teacher and what it means to have a cluster at 135% of capacity and what that means for classrooms in a cluster where all the, where the average of the school is 135% of capacity. And I would not want to teach in an environment where all of the classrooms in a school were 135% at capacity. And I know from talking to teachers that despite what we say about our class size objectives, there are many classrooms in Montgomery County that don't meet the class size objectives. In addition, despite the relative ease apparently the people talk about, about providing capacity to schools as compared to roads, Karl I think you had a chart that showed your projections were eleven schools over 141% of capacity and three schools over 161% of capacity? That doesn't speak to me of, doesn't give me a comfort level that we can actually effectively address capacity quite so easily. There are schools right now that are over 160% of capacity. I don't think it is a good learning environment. And if the Council is supporting educational objectives and we have tried to make class size reduction and educational objective which we've funded, I think that it ought to be reflected in the policy we have for how many kids we are going to put in the schools. And it's not just the classroom, it's the core facilities, it's creating schools where kids are eating lunch at 10:30 in the morning because the only way you can jam everybody through the small core lunchroom is if you start eating lunch at 10:30. I mean, that's not a real appropriate time to be eating lunch for children. So I think there are a lot of problems that go into overburdening the schools in their capacity. So I'm more comfortable with 115 or 120. I'm willing to go along with the Chair's recommendation of 120 as the moratorium level. There is not a lot of difference in terms of actual number of students. But I also hope frankly that you're right, that we're going to revisit this in two years. And that if we generate enough money from construction and we generate enough money from facilities payments, that we'll be able to address this more definitively and we won't be in a situation, might take two or four years, where we even have a discussion about schools being at 140 or 160% of capacity.

Councilmember Leventhal,

Marc, the law calls on us to revisit this every two years.

Councilmember Elrich,

We can revisit it. I want to see results. I'm not concerned that we won't revisit it, I'm concerned that I, what I hope happens is that the combination of decisions we are making, particularly the funding decisions, which are the thing that hamstring the Council, and I don't think the fact that things weren't done is a reflection of ill will or ill intention, I think it is a reflection of the resources one has to apply to solving the



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problems. A lot of what's in here are efforts to make sure we have the resources to solve the problems. If we solve the problems, we won't have this discussion and there won't be the concern in the community about how is it that my school with 161% of capacity is okay. So that's where I'm coming from.

Councilmember Leventhal,

Okay. But, Madam President, I just quickly, I mean, we were told at our last session that no, not one project exceeded the first threshold for a facilities payment. So when you cite, I mean, I too, obviously no one would want any school building to be at 160% of capacity, nobody would want that.

Councilmember Elrich,

George, we have a misunderstanding, as Bruce wrote me in a later email, he thought my comment was no cluster and I said no, it was no school. And he confirmed there are schools over that level.

Councilmember Leventhal,

No applicant has been subject to the schools facilities payment.

Councilmember Elrich,

Right.

Councilmember Leventhal,

In the last four years not one single one. So, the fact that a school and I'm very sorry to hear it, and I hope we can do something about it, is at 160% of capacity is not a result of the 2003 Growth Policy.

Councilmember Elrich,

Did I say that?

Councilmember Leventhal,

No. But we need to clarify that the Growth Policy that we adopt now probably won't get that particular school below 160% of capacity.

Councilmember Elrich,

But the combination is going to raise money and it's going to put caps on where we think our schools should go and those two things together in the long run should produce a better and more stable outcome.

Councilmember Knapp,

Alright. So, at this point, anything else, Ms. Floreen.

Councilmember Floreen,

Yeah, when we took it up, you asked about the year proposal, I really went with the Board of Education and the Planning Board, the timing issue the Board hadn't weighed



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in on and I think my view, I've been trying to be consistent viewing the, and adopting a five year test for all of this analysis, transportation as well as schools. And I think the hope would be that you make this determination, these rules kick in once you've approved a capital program. You know what you're paying for. Nothing more complicated than that. I don't think there is anything magical about five years starting in, I don't know exactly where the Planning Board, where was the Planning Board on this number? Timing?

Unidentified  
Five years from now.

Councilmember Floreen,  
Five years from now.

Royce Hanson,  
Yeah, five years from now.

Councilmember Floreen,  
So between five years from now, I mean, if that's where the Board of Education and the Planning Board are, I'm fine with that as well. But I've been trying to be consistent and actually they have been too. They are focusing on four, I'm focusing on five. Because I think it is a more realistic assessment of the capital program over time. We just have a little different view on this. But I would say, we are kidding ourselves if we think this is going to generate revenue. Because the numbers are so significant, they will put a further damper on the ability to get the dollars. And if that's the effort. You know, that is the question in term of revenue generation here if you ask me.

Council President Praisner,  
Okay. Lights, Councilmember Berliner.

Councilmember Berliner,  
Madam President, I just wanted to share with my colleagues that when we get to the appropriate time of actually talking about the school facility payment as opposed to the three items that you identified, I will have a proposal to reduce that payment. So I just want to share that with my colleagues so some of this, I don't think we need to talk about it now unless my Council President thinks it is appropriate to do so. But there are many people who think that the level of the payment has some relationship to when the payment ought to kick in. And so to the extent to which my colleagues are interested in having that fact before them as they consider this, I'm happy to share it with them but I didn't want to jump ahead of the Council President's schedule with respect to this.

Council President Praisner,  
Okay, well I'm just trying to move us through parts of this. Let's see where we are. If I understand Councilmember Elrich, what he is saying is that he's willing to go along with 120% as the threshold for a residential moratorium.



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Councilmember Elrich,  
Yes.

Council President Praisner,  
We then have a Committee recommendation for applying the Growth Policy now, not in July, which is I think what the Planning Board recommended. We have a four year test for approval of facilities for schools. We have 105% of program capacity as the threshold for requiring a school facilities payment and 120% as the threshold for a residential moratorium. That is the Committee's recommendation. Councilmember Berliner.

Councilmember Berliner,  
Thank you Council President. I would have an amendment to that Committee recommendation if that's in order on one aspect of the recommendation and that is to go to a five year test as opposed to a four year test as Councilmember Floreen and the School Board and the Planning Board recommended I believe. And I believe that the results of the five year test are actually for those of us who care about school capacity, a better result for us.

Council President Praisner,  
Is there a second to that motion?

Unidentified  
Second.

Council President Praisner,  
Okay. Moved and seconded that we have a five year test for schools, a five year school test. Are there any other motions related to the recommendations that are a piece of it? George.

Councilmember Leventhal,  
Well, I was just going to speak to the motion. I'll vote for this motion, but I'll tell you what, I'm going to repeat what I said four years ago. That is my hope is that this Council will find the resources and I hope the state will get us some resources that we do not put areas, that we do not put areas into moratorium. It seems to me that our job, the purpose of this exercise is to fund, through a variety of sources, the infrastructure that's necessary to maintain a decent class size. And so in voting for this, it is not my goal to put neighborhoods into moratorium. My goal is, is that we find the resources to build the infrastructure we need but I will vote for this.

Council President Praisner,  
Okay. Yes.

Councilmember Berliner,



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I would like to ask staff if they could to explain the ramifications of this.

Glenn Orlin,  
What you want to look at is table 5B and Circle 55. [Multiple speakers].

Councilmember Floreen,  
55?

Glenn Orlin,  
55.

Councilmember Trachtenberg,  
First packet.

Glenn Orlin,  
First packet. This would be the alternative motion for a five year test starting now at 120% capacity would be areas at that would go into moratorium and it would be Einstein, Kennedy and Clarksburg.

Councilmember Berliner,  
And as I appreciated Council President --.

Glenn Orlin,  
Clarksburg clusters.

Councilmember Berliner,  
Under a four year test it was, if you look back on Page 54, if I'm correct, Einstein and Kennedy were in moratorium also if I'm reading that correctly?

Glenn Orlin,  
That's correct.

Councilmember Berliner,  
So the only difference with respect to my motion does relate to Clarksburg, is that correct?

Glenn Orlin,  
That's correct.

Michael Faden,  
It was --.

Glenn Orlin,  
The middle school level of Clarksburg. Exactly what I mentioned earlier, what's happening is middle school enrollment is going up in that extra year. It is just barely



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below, it is barely adequate under the four year test, but under the five year test it is minisculely inadequate but inadequate nonetheless.

Council President Praisner,  
Councilmember Knapp on this.

Councilmember Knapp,

Thank you. Okay. A lot of moving parts here. So we're trying to figure out practically what we get to. If I understand our numbers and we haven't actually gotten to the facility payment itself yet, the objective of this is to generate the resources to ensure that we have built appropriate additional capacity. Okay. So the challenge then is to make sure we do something that generates the amount of money necessary to get us to that end point. And so while we're focused on when the moratorium kicks in, it would seem that the more important thing is going to be to look at how much, where do you generate the resources, to meet, moratorium is kind of, it's a nice thing to say you did it, but, so what if we still can't pay for the, can't pay for the capacity. Right. Exactly. And so if we go back and look at where we generate the resources, it seems that's the most, that's the more important part. And so I think, I'm just trying to do the math here, so if we in any of the calculations actually gone through to determine what any of these, what amount of revenue any of these would actually generate and then how it would apply to our actual CIP?

Council President Praisner,  
Well the revenue generated would relate to people coming forward to develop in the projections on that.

Karl Moritz,  
Right. Well, if revenue, using that as the objective --.

Councilmember Knapp,  
I'm not using that. That is the objective.

Karl Moritz,  
Right. Lowering the threshold for the school facilities payment and increasing the threshold for the moratorium would guarantee you the most revenue.

Councilmember Knapp,  
So then, in the upper threshold really is not quite as relevant as what you're doing in between? Which gets to kind of the question I was asking earlier. So that would seem, if I'm looking at these right, 1, 2, 3, 4, 5, I'm just doing, I'm trying to count between different charts. Go ahead.

Council President Praisner,  
Sure, go ahead George.



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Councilmember Leventhal,

I just urge my colleagues to listen with great caution to the projections of our esteemed colleagues from the Planning Board, since four years ago any projections we would have had about the facilities payment charge would not have proved correct, since zero projects were subject to facilities payment charge and Marvin Weinman who was sitting in the audience a little while ago, showed how far, far short we fell over the last four years in impact tax revenues received from school construction of what projections were.

Council President Praisner,

I agree with you George.

Councilmember Leventhal,

Past practice has shown we don't get a lot of revenue from this aspect of the Growth Policy.

Council President Praisner,

Well making projections based on the revenue is a function of other things and not necessarily assumptions made in this context.

Karl Moritz,

And I would clarify that no forecast of school facility payment revenues were furthered, were created. We did not create projections of school facility payment revenues.

Council President Praisner,

Planning Board did not and I don't believe we did in the past either.

Karl Moritz,

That's right.

Councilmember Knapp,

Okay.

Council President Praisner,

There, I don't think there were ever any projections of revenue from school facility payments.

Unidentified

No, but there were for impact taxes.

Council President Praisner,

Yes.

Unidentified

And we fell way short.



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Council President Praisner,  
And we're way short on those. Correct.

Councilmember Knapp,  
Okay, so the current motion before us is a five year, is a five year term.

Council President Praisner,  
Right.

Councilmember Knapp,  
Correct?

Council President Praisner,  
Yes.

Councilmember Knapp,  
So we have to dispose of that before we do the next thing?

Council President Praisner,  
Yes.

Councilmember Knapp,  
Alright.

Council President Praisner,  
Okay. Councilmember Floreen.

Councilmember Floreen,  
Yes, just to understand where the beginning part of this would be. I'm looking at, is it right to look at Circle 47? That's 105% program capacity or is that the wrong number.

Glenn Orlin,  
It would be Circle 46.

Councilmember Floreen,  
Circle 46. So okay. So that would be, that would say that anyone within the BCC cluster, Blake, Clarksburg, Einstein, Kennedy, Richard Montgomery, Northwest, Quince Orchard, Rockville, Wheaton and Whitman and Clarksburg would be required to pay the additional fee, whatever that would be?

Glenn Orlin,  
If they want to go forward, yes.

Councilmember Floreen,





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If they want to go forward.

Glenn Orlin,  
Right.

Councilmember Floreen,  
Just wanted to be clear about the starting point.

Glenn Orlin,  
And Clarksburg would have to pay, make all three payments.

Councilmember Floreen,  
Okay. Thanks.

Council President Praisner,  
Okay. The motion in front of us is to change the school facility test for, from four years as recommended by the Committee to five years. All in favor of the motion indicate by raising your hand. Councilmembers Leventhal, your motion. [multiple speakers]. Councilmembers Leventhal, Andrews, Berliner, Knapp, Trachtenberg, Elrich and Praisner, those opposed? Floreen.

Councilmember Knapp  
She's not sure.

Councilmember Floreen,  
I'll abstain.

Unidentified  
It was your numbers. [multiple speakers].

Council President Praisner,  
Alright. Two abstentions. Alright, Councilmember Knapp. We're going to go to 1:15.

Councilmember Knapp,  
Alright. Thank you Madam President. In light of the previous conversation and looking at that the objective really is to generate the appropriate level of revenue to make sure that we actually can program the capacity and given the feedback from Mr. Crispell as it related to when they would actually program it, when you would actually have enough to be able to get to a four classroom threshold, I would propose that we then look at the, whatever we are calling this, that we look at 110% of program capacity. Because that's what the Board, that gets the Board to the point that they can actually program the actual request for additional capacity and then have at the upper end the 135% of program capacity because that effectively gets you the ability to generate the amount of revenue and since the things that we program the quickest are health and safety and



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capacity, we're within the window to be able to generate the resources and then actually program those resources in the appropriate way.

Council President Praisner,  
Yes.

Councilmember Knapp,  
And so my motion would be to go to 110% and 135% as the Board had recommended because I think that gets us the amount of resources to actually program the capacity as opposed to putting a place into a moratorium.

Councilmember Floreen,  
That's right.

Council President Praisner,  
That was Councilmember Floreen's Committee recommendation. Yes. The motion in front of us would be to use 110% of program capacity for the school facility payment and 135% for a residential moratorium. I see no other lights. All in favor of that motion please indicate by raising your hand. Councilmember Knapp and Floreen. Those opposed? Councilmember Andrews, Leventhal, Berliner, Praisner, Trachtenberg, and Elrich. Valerie, are you abstaining on that one too?

Councilmember Ervin,  
I'll abstain.

Council President Praisner,  
Abstaining, okay. Alright. Anything else on the school facility test on the one elements that we talked about? Then we would move to the next point, which is the staging ceiling and there is I think – .

Councilmember Leventhal,  
Do we not require a vote then on the Committee's recommendation? I'm trying to --.

Council President Praisner,  
Well, we, I was going, well, okay. That's a good idea. All in, that's fine.

Councilmember Leventhal,  
I thought that's what we were voting on the first time. I thought we were.

Glenn Orlin,  
No.

Council President Praisner,  
We were voting on the amendment.



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Councilmember Leventhal,  
I now understand that the Berliner amendment was a separate vote. I thought it was all wrapped up.

Council President Praisner,  
No.

Councilmember Leventhal,  
That's what I said I was voting for.

Council President Praisner,  
Alright well, let's, that's a good idea, George. That's a good point. All in favor of the recommendations that have been made to date which would be a five year test at 105% of program capacity threshold for a school facilities payment, 120% is the threshold for a residential moratoria, using it to go into effect now. All in favor of that motion? Councilmembers Leventhal, Andrews, Berliner, Praisner, Trachtenberg and Elrich. Those opposed? Those abstaining, Councilmember, oh, I'm sorry Valerie I didn't see your hand. Councilmember Ervin opposed, Councilmember Floreen abstaining. Okay. I think since there are no staging recommendations that have been developed, I think that is more appropriately an action for follow-up than at this point so let's move to the school facilities payment and the amount, and I'll turn this, well, we did discuss this within the PHED Committee as well as in the MFP Committee. Correct?

Glenn Orlin,  
I thought there was a recommendation from the Committee to do staging.

Council President Praisner,  
Well, there is but there isn't any staging proposal so.

Glenn Orlin,  
Well, there was.

Councilmember Leventhal,  
We can add it but we can't do it.

Glenn Orlin,  
Well, okay. The proposal was to use the charts that are attached and if there is a student.

Council President Praisner,  
Where?

Glenn Orlin,  
The tables 1A through 6, the purple table. In this case we're talking about actually table 5B, you can look right at that.



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Council President Praisner,  
It would be better if you referred to a page.

Glenn Orlin,  
Sorry. Circle 55.

Council President Praisner,  
Okay.

Glenn Orlin,  
I apologize. Circle 55 is the scenario for a moratorium and the idea here was that if the, third to right column, capacity remaining at 120% MCPS capacity, if that number were positive, Circle 55.

Council President Praisner,  
Yes.

Councilmember Knapp,  
Now I know why Glenn was so interested. This was his recommendation.

Glenn Orlin,  
Yeah, well, this Committee recommendation. The third to last column has the capacity remaining at 120% capacity, where it's a negative number is if you've already noted those areas would go into moratorium. Where it's a positive number under this proposal, which was a staff proposal, which the Committee I understood agreed 2-1 in favor of.

Council President Praisner,  
Right, you're absolutely right. But my error because of the way in which you presented it, you didn't lay out the elements.

Glenn Orlin,  
Sorry.

Council President Praisner,  
Of staging.

Glenn Orlin,  
I didn't give the example because I was trying to keep everything short in the packet.

Council President Praisner,  
Right, well.

Glenn Orlin,



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I'll just explain it quickly. Where there is a positive number essentially the amount of residential development that could occur would be limited by the amount of development that would produce that positive number.

Unidentified

--that last sentence please.

Glenn Orlin,

It's the left over capacity.

Council President Praisner,

[Multiple speakers]. Once the pie --. The point is it is a rolling capacity.

Glenn Orlin,

It's in Clarksburg.

Council President Praisner,

So once the capacity has been reached where there is a negative, where there is not a negative.

Glenn Orlin,

Yeah.

Council President Praisner,

If you use up the capacity, you don't go into negative.

Glenn Orlin,

Right, the idea is to --.

Council President Praisner,

And allow a development to occur.

Glenn Orlin,

Let me give you two examples on this chart. Under the elementary school enrollment, the third line down, Blake, you'll see there's a remaining capacity of 42 seats. And what this would mean is that while residential development could be approved in the Blake cluster, it wouldn't be approved by more than what would generate 42 seats at the elementary level. Now the other example is critical. Go down to the high school level. And look at Clarksburg. Zero. It just so happens that we're right at the boundary. And so actually it would be in effect if you had ceilings, a moratorium, we already have the moratorium in Clarksburg because of the middle school level, but at the high school level it would, it also wouldn't, well, I guess it is irrelevant because we wouldn't apply it in the middle school. But if that zero appeared anywhere else it would effectively mean we are at the limit. We can't approve any more. Now the other numbers are actually



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sufficiently large that it probably wouldn't have any kind of an impact but it would keep an area --.

Michael Faden,  
For Wheaton.

Glenn Orlin,  
Wheaton, where?

Michael Faden,  
Elementary.

Glenn Orlin,  
Elementary School, 62. Give you an idea as to how many units we are talking about. At the elementary level, the School Board's translation numbers, student generation capacity numbers for a single family detached house generates about a third of a kid. So 42 seats translates to about 126, 130 units. So you could approve up to 130 units in the Blake cluster.

Michael Faden,  
They could.

Glenn Orlin,  
Right, the Planning Board could approve up to 130 units in the cluster above what was assumed by MCPS in its forecast for enrollment but then no more than that. It is the same concept as we have in Policy Area Review in transportation for you know, 25 years.

Council President Praisner,  
So, the Committee's recommendation, it was Glenn's and the Committee majority supported going in that direction. Roger?

Councilmember Berliner,  
Madam President, if I could I would like to hear from Dr. Hanson with respect to this, on its face it appears to be a reasonable approach and so I'd like to hear why that's not from your perspective or if you concluded otherwise.

Royce Hanson,  
Well, you know, I think you're setting the moratorium ceiling too low in the first place. But the, basically I don't see any alternative if a subdivision comes in and you've already set this as a limit. I don't know why you're calling it a staging adds anything.

Councilmember Berliner,  
From your perspective you would have to look at these numbers in order to determine whether or not --.



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Royce Hanson,  
You know, if we've got a subdivision that comes in and produces 43.

Councilmember Berliner,  
Kids.

Royce Hanson,  
Elementary students in Blake, I would assume we would disapprove it.

Councilmember Berliner,  
From your perspective this is what you would do anyway in order to implement.

Royce Hanson,  
Either that or they have to reduce the size the size of it until it's only 42 students.

Glenn Orlin,  
I don't think we have.

Royce Hanson,  
Or we can waive the process along with the students.

Glenn Orlin,  
I don't think you have the authority to do that.

Royce Hanson,  
Middle school and --.

Council President Praisner,  
Just a minute Glenn.

Glenn Orlin,  
Oh, if, I'm sorry, if --.

Council President Praisner,  
Wait, Glenn.

Glenn Orlin,  
I'm sorry.

Council President Praisner,  
Now, Glenn.

Glenn Orlin,  
I'm sorry. [laughter]. Are you saying that you would have the authority -- .



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Royce Hanson,  
I was being facetious.

Glenn Orlin,  
Oh, okay.

Councilmember Trachtenberg,  
I think we all need lunch.

Council President Praisner,  
Well, shortly. Okay, so the Committee's recommendation was for a staging ceiling and the Committee's recommendation would be before us for a straw vote at this time. Question, Councilmember, Vice-President Knapp?

Councilmember Knapp,  
I guess to the point that the Chairman just raised, how does it happen? I mean, so, if it is 43 and the number is 42, how do you ever get past the number? It doesn't ever, you don't ever get past the number?

Glenn Orlin,  
Well, every year you reevaluate these numbers. So, you got a new enrollment forecast, you have a new set of capacity, you recalculate these charts.

Councilmember Knapp,  
But it would never be over capacity so you would never actually program any additional space because you'd never get above zero.

Royce Hanson,  
The only thing I suppose it could be done in a process like this.

Council President Praisner,  
In a pipeline.

Royce Hanson,  
Is we could impose, we could impose a condition on the subdivision that they couldn't build more than the number of houses that would produce the lowest number of students at any level until the capacity in the schools increased. But that's the case anyway.

Councilmember Knapp,  
I guess --.

Royce Hanson,  
I really fail to see what you gain by calling this staging.





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Glenn Orlin,

Whenever, and you'll be talking about this later this afternoon probably when you talk about some of the options for PAMR and alternatives, but when we had staging ceilings in transportation tests and there are proposals out there now, we have gotten a lot of letters for staging ceilings, again, the way staging ceilings work is you can approve only up to a certain number of units or jobs in an area and that's it. And so that's what this would say as well. If you have, if there is available capacity, if you pass the test, well yes, you passed it but it is limited to how much additional space there is before you hit the threshold.

Council President Praisner,

I'm going to, I know there are lights but I can sense the mood around the table so let's just vote on the Committee's recommendation. All in favor of the --.

Unidentified

I'm not prepared to vote right now.

Council President Praisner,

You're not? Okay. Oh, all right.

Councilmember Leventhal,

Are we simply confirming what we already voted for, that the moratorium goes into effect at 120% of capacity?

Council President Praisner,

No. Because these are ones that are already going forward.

Karl Moritz,

Well what is different about this than what we currently do. And why you're voting on it now is that currently the test is a pass fail test. So every July an area is either adequate or inadequate and if it is adequate, there is no limit on the number of approvals in that cluster. This proposal is saying you know, instead of that proposal we will set limits on the amount of development.

Councilmember Leventhal,

Is not the affect of the vote we just took to put a limit? Did not the Chairman just say.

Council President Praisner,

No.

Councilmember Leventhal,

That if something exceeds 120% of capacity it is not --?

Council President Praisner,



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It's a difference of, that relates to the cluster and the calculation done in the aggregate. This is an individual.

Councilmember Leventhal,  
Relates to the specific school.

Council President Praisner,  
No, this is an individual, you've got 42, you got capacity for 42 students, so development that comes in in an area where there is not a test, not a requirement, in other words it can go forward, there is no moratorium or facility payment issue, may have a development come in that generates more than 42 students in which case it would place that area, it would have placed that area in moratorium if we were doing the calculation before that applicant came through. But it doesn't. The applicants can continue to come through because we are not changing the number. We only do it at certain points in time.

Councilmember Elrich,  
It makes this number flexible.

Council President Praisner,  
It is a sliding number rather than an absolute number that is done at Growth Policy actions.

Councilmember Leventhal,  
And was Councilmember Floreen's view in Committee that she just had no view on this or she felt that we shouldn't take this step?

Councilmember Floreen,  
I was opposed to it.

Glenn Orlin,  
She opposed it.

Councilmember Floreen,  
I was opposed to it.

Councilmember Leventhal,  
You voted against it?

Councilmember Floreen,  
But I have a question.

Council President Praisner,  
Councilmember Leventhal and then I have Councilmember Berliner and then --.



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Councilmember Leventhal,

Well, I would like to hear, when it is time and when it's in order, I would like to hear Councilmember Floreen explain her reason for opposing it in Committee.

Council President Praisner,

Okay. Councilmember Berliner is next and then Councilmember Floreen.

Councilmember Berliner,

The reason why I'm drawn to it was based on Karl's response to the gap if you will that exists today that it is a pass fail test today. That is, if you were at 119% of capacity, and somebody came in with a proposal that would effectively put you at 125%, that project can go forward because under the moratorium rules that we're adopting, if it's 119% it passes irrespective of how big the project is and the consequences of that project on the 120% figure. So what I appreciate the significance of staff's recommendation or the Committee's recommendation, is to ensure that 120% means 120%. So it is a way of enforcing this so it is no longer a pass fail test that can operate independent of the 120% but ensures that the 120% is in fact adhered to. So, if that understanding is correct, on that basis I think it is an appropriate resolution.

Council President Praisner,

Councilmember Floreen.

Councilmember Floreen,

Thank you. I had a question. The other end of the scale, if there is a, if we're going to go into this area of having ceilings based on clusters, which is more stricter than I think has ever existed in the County, would that also apply to the base at which you would have to pay the schools facility test? There are a couple clusters, looking at the chart you pointed me to before, on Circle 46, not too many, Walter Johnson 49 children at this point. Northwood cluster 26 children at the elementary level. Let's see. RM at 53 at the high school level. We really don't have too much to do with them. And primarily would the application be that in those, there would also be a capacity limit at that level as well?

Glenn Orlin,

That was our recommendation as well.

Councilmember Floreen,

Is that the natural?

Glenn Orlin,

But to be fair, the Committee did not talk about that. So, that's a good point that would need to be clarified by the Committee members. The way it would work under our proposal is that the first, in this case of Blake, if we are looking at the 105% chart which is 2B on Circle 46, now we're looking at the Walter Johnson cluster at the elementary level.



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Councilmember Floreen,  
That's probably the closest one, yeah.

Glenn Orlin,  
That's 49 units to the good. The first students, right, students capacity available, the first, the amount of development that would generate up to 49 students, that's, there would be no school facility payment. But anything beyond that.

Councilmember Floreen,  
Yeah.

Glenn Orlin,  
Would for each seat --.

Councilmember Floreen,  
Well, I was just trying to understand if that were the other part of this analysis. I mean, I can't speak for my colleagues. But my view is that these things are, these are hypotheticals. And they are just guesses, projections, we don't know for sure. It is a best guess but the more you limit, the more you impose these numbers in terms of tests and fees, and I'm interested in whatever Roger has to propose, I think the less you get in terms of revenue to address the under-riding question that I think we all agree on which is trying to provide adequate infrastructure. But this puts a whole cap on everything, this approach. I don't think it is the right way to go.

Council President Praisner,  
Councilmember Ervin.

Councilmember Ervin,  
This question is for Mr. Crispell. The conversation that we are having right now, how much is this conversation in context with how MCPS does its forecasting for its CIP? So, for example, if Clarksburg right now is at capacity and you all are putting your CIP together, are you looking at all of these areas right now that are at capacity or nearing capacity in terms of how you put your CIP together?

Bruce Crispell,  
Yes I would say we are. I mean if you get to the 120%, at 105, I'm not sure as I said before, that we would be programming capacity in some of those close calls. Because it may be at the elementary school spread over a lot of schools and not one of them exceeds four rooms being in deficit. But when you get to 120, obviously the cluster is in trouble. And then we would be, we would probably have either something in facility planning that may show up in the next CIP that adds that chunk of capacity that takes care of the problem. So having said that, I should say that the Board of Education did not support staging ceilings and they felt that for a couple reasons. It adds more complexity to an already complex activity here and it sort of stretches the enrollment forecast I think beyond, it implies a certain level of precision in the forecast that really



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isn't there to be honest to acknowledge that, that we can say that exactly 40 more students generated, we can take and then we cut it off. I think you have to kind of design a school test that recognizes the dynamics of the accuracy of the forecast and the other things that we do and that's why the Board didn't support it.

Councilmember Ervin,

Follow-up question to that then, so, again using Clarksburg as a hypothetical, what we have been hearing from the Planning Board and also from MCPS is that 85% of the new growth in many of these areas is coming from existing homes so this could happen whether or not we impose any new tests. We could go you know, in any one of these areas, we could be in a situation where we're over capacity easily regardless of what we do at the dais today or next week. So I'm just struggling with this. I mean I have abstained on two votes now because I'm not quite sure by voting yes or no on any of these items, it is going to matter. I'm just really struck by how I'm becoming more and more convinced that what we do here is not going to matter in terms of not everything, but in terms of the schools test and how the schools do their forecasting, how we look at the CIP, how we pay for new schools and renovations to schools. How will this annual Growth Policy make a difference in that regard?

Bruce Crispell,

I think the most significant way is revenue. And I think the school Board, whenever they have looked at the Growth Policy over the years has tilted, if at all, towards find us ways to pay for facilities so we can get them built. That's the problem. We need sufficient revenue for the infrastructure and the school tests, you know, it is true, we have a lot more existing housing that turns over and generates students when it turns over than that increment which is new development. In the past few years we have had 3 to 4,000 new home completions a year and 20,000 some turnover sales of housing. So and you're just as likely to bring a family with children into a turnover house as into a new one. So, that's why we say you know, 15% or so is attributable to that new development that you're tackling with the Growth Policy.

Council President Praisner,

We're going to vote on this issue. I know Councilmember Elrich's light is on. But, we're going to vote on this piece and then we're going to break for lunch. I know we have a public hearing at 1:30. We'll be back at 2:00, starting with the public hearing and then move back to the Growth Policy. I apologize for folks who may be here for the public hearing but you may want to go get some lunch and come back at 2:00 and our colleagues at well. So Councilmember Elrich.

Councilmember Elrich,

Yeah, I just wanted to make a brief comment about the turnover issue. I mean, the fact that the turnover housing produces a lot of residents or new students is true, but the impact on the schools was not exactly unpredicted. I mean, it is not just the turnover of the housing that's created the overcrowding, it is a problem of a decision that was made many years ago in response to an earlier economic problem which led to the closure of



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many schools. I went to McKinney Hills Elementary School, you're talking about reopening it. I went to Montgomery Hills Junior High School, it's still closed. So, those neighborhoods were served by schools that were designed to serve families moving into two and three bedroom houses in those neighborhoods. When you close the schools that are meant to serve the neighborhoods, and we always wondered whether the school system thought that people just lived forever and never died, and so therefore when their kids left, they just stayed there forever. Some of us thought that the families would move back in and that we'd want their schools. So, the fact that you've had turnover increasing enrollment is not unexpected and the fact that it has caused overcrowding in down county schools is a product of a decision to close schools. That may have been the only decision possible in the economic environment that it was made, but this is not something that happened magically and it's not the fault of people moving into older neighborhoods. It is a series of policy decisions that were made that created this outcome.

Council President Praisner,

Well, I don't want to talk about closed schools. Been there, done that. But it is a function of students who were there then, maybe a decision about mothballing more might have been a problem, a recommendation, but the motion in front of us is to implement a staging process as identified and not fully discussed in the packet unfortunately, and we'll have to craft the appropriate language for the resolution. All in favor of the motion to impose a staging ceiling? Councilmember Leventhal, Andrews, Berliner, Praisner, Trachtenberg, Elrich. Those opposed? Those abstaining? Councilmembers Floreen and Councilmember Ervin is not present. Okay, we are going to break now. We'll come back at 2:00 for the public hearings and then go back to the Growth Policy. Thank you.

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1 Council President Praisner,

2 Good afternoon, ladies and gentlemen. This is a public hearing on Zoning Test  
3 Amendment 07-14, which would amend the definition of radio and television broadcast  
4 studios and to increase the building height allowed for buildings on CBD-2 zoned  
5 properties in the Ripley/South Silver Spring Overlay Zone. Zoning Test Amendment 07-  
6 14 would also remove expired provisions in the Overlay Zone. Persons wishing to  
7 submit additional comments should do so by the close of business on November 2nd,  
8 2007, so that your views can be included in the material which staff will prepare for  
9 Council consideration. The PHED Committee worksession is tentatively scheduled for  
10 November 5th at 9:30 a.m. Please call 240-777-7900 to confirm. Before beginning your  
11 presentation, please state your name and address clearly for the record and spell any  
12 unusual names. And I want to make the comment before we start the hearing that I  
13 made this morning as we began the Council meeting. Given the special session that is  
14 going on in Annapolis right now, the question of whether Councilmembers may or may  
15 not need to be in Annapolis may alter the Committee schedule on short notice  
16 sometimes. So I would definitely take the advice in the hearing introductory statement  
17 and check to confirm that the item is on the agenda and that the date continues to be  
18 that date. We have two speakers in Group A: Gary Stith, speaking for the County  
19 Executive; and Greg Russ speaking for the Planning Board. Gary?

20  
21 Gary Stith,

22 Thank you. For the record, my name is Gary Stith, Director of the Silver Spring Regional  
23 Center, representing County Executive Isiah Leggett. Zoning Test Amendment 07-14  
24 makes several modifications of the County Zoning Ordinance that are limited to the  
25 Ripley/South Silver Spring District of Downtown Silver Spring. This is the area of  
26 downtown bounded by the CSX railroad tracks, Georgia Avenue, and Bonifant Street.  
27 This area is literally in the center of downtown and has strong edges in the railroad  
28 tracks on Georgia Avenue that distinguishes it from the surrounding area. It is very near  
29 the Paul S. Sarbanes Transit Center, which will start construction next year. The Silver  
30 Spring CBD Sector Plan states that, "The District is dominated by automotive shops,  
31 public and private parking lots and garages, and small warehouse facilities. Existing  
32 buildings and land uses do not take advantage of the area's excellent location." The  
33 vision in the CBD Sector Plan is that, "The combined effort of economically viable  
34 zoning and public and private investment the Ripley District has envisioned is a  
35 revitalized, mixed-use district with its primary focal point a high-density commercial  
36 development." This proposed Zoning Test Amendment will help accomplish this vision.  
37 Building heights up to 200 feet are permitted in the vicinity across the railroad tracks in  
38 the Noah Project and on the properties in the north part of the Ripley/South Silver  
39 Spring Overlay Zone that fall within 800 feet of a Metro station entrance. There is  
40 research that indicates that people are willing to walk further from transit services to  
41 their place of work or residence. The distance should easily be 1,200 to 2,000 feet. In  
42 addition, this distance is to the Metro station entrance, not the Transit Center entrance.  
43 Over half of the transit passengers using the Silver Spring Transit Center are bus riders.  
44 So the walking distance should effectively be to the entrance of the Transit facility.  
45 Silver Spring has some limitations caused by underground rock that makes construction





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1 below grade for parking very expensive. The additional height proposed in the ZTA will  
2 allow for parking above grade and still permit the maximum utilization for the density in  
3 the CBD-2 underlying zoning. Maximizing the permitted density this close to the Metro  
4 station is smart growth and would meet a long-standing County development policy of  
5 concentrated development close to transit facilities. Because the Ripley District is  
6 literally in the center of the CBD, this is the most appropriate place for the maximum  
7 height allowed by the zoning. The analogy of the tent for density height and height in the  
8 downtown has been a basic design concept for development in all our CBDs in the  
9 County. The high pole is in the center, and the tent goes down toward the edges. The  
10 Ripley District is in the center of the Silver Spring CBD and should be allowed to be a  
11 part of the highest area of this Downtown Silver Spring. To encourage the mixed-use  
12 objective for the future redevelopment of the Ripley District, this ZTA requires that to be  
13 allowed to build up to 200 feet, the first floor should be retail. The Ripley District is large  
14 enough that a critical mass of retail could be developed in this area, allowing it to  
15 become a retail destination. The Ripley District is the next redevelopment opportunity in  
16 Downtown Silver Spring that has high visibility from Georgia Avenue and the Metro line.  
17 It is underutilized. It is a real opportunity to encourage mixed use close to transit  
18 services in the center of the downtown area of Silver Spring. This ZTA will help  
19 encourage the revitalization of this opportunity and the vision of the Sector Plan. Thank  
20 you.

21  
22 Council President Praisner,  
23 Thank you. Mr. Russ.

24  
25 Greg Russ,

26 Thank you, Madame President. For the record, Greg Russ from Montgomery County  
27 Planning Board. The Planning Board reviewed Zoning Test Amendment number 07-14  
28 at its regular meeting on October 25th of this year. By a vote of 4 to 1, the Board  
29 recommends approval of the text amendment. The Board, however, has identified  
30 several issues for the Council's consideration. The first part of the text amendment  
31 addresses several plain-language modifications to the "definition of radio and television  
32 broadcasting studio" and provides a clarification to allow broadcasting studios to include  
33 equipment for receiving a program via satellite. The Board raised the concern that in the  
34 future there might be means for program distribution and receipt other than satellite,  
35 wire, or fiber optic cable. The Planning Board recommends that all-inclusive language  
36 be included in the ZTA for program distribution and receipt to avoid having to modify the  
37 definition each time a new technology arises. The second part of the ZTA would allow a  
38 maximum building height of 200 feet on CBD-2 zoned properties within the Ripley/South  
39 Silver Spring Overlay Zone. The purpose of this overlay zone is to provide the flexibility  
40 needed to encourage revitalization activity. Much of South Silver Spring has  
41 redeveloped since the CBD Sector Plan was approved; however, the Ripley District has  
42 yet to begin redevelopment, despite two optional method approvals. The Board believes  
43 that the proposed Zoning Test Amendment could assist in facilitating the assemblage  
44 and redevelopment of the remaining properties in the Ripley District and help achieve  
45 the Sector Plan goal of encouraging transit-oriented development. The Board, however,



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1 notes that any buildings located along the west side of Georgia Avenue within the  
2 Overlay Zone would continue to be limited to 90 feet in height, consistent with the height  
3 on the east side of Georgia Avenue and in accordance with the Silver Springs CBD  
4 Sector Plan. These buildings may step back within a two-to-one slope and be increased  
5 in height pursuant to the height restrictions of the CBD-2 zone. The record should reflect  
6 this understanding. And finally, the Planning Board recommends that the language on  
7 lines 37 through 40 of the text amendment be clarified. The language now states that  
8 any structure used to collect or radiate electro magnetic waves must not be included in  
9 calculating building height under the 200 feet limit. This language should be revised to  
10 eliminate any confusion that the height of any building in the CBD-2 zone within the  
11 Ripley/South Silver Spring Overlay Zone, including rooftop structures other than those  
12 exempted from the height controls and the Zoning Ordinance, be limited to 200 feet.  
13 The Board would not support any interpretation that would allow a combination of  
14 building and rooftop structure to exceed 200 feet. Thank you.

15  
16 Council President Praisner,  
17 Thank you very much. Councilmember Leventhal.

18  
19 Councilmember Leventhal,  
20 Thank you, Madame President. Gary, I know we need to meet; but I wanted to get some  
21 things on the public record here; and I wanted to ask Mr. Russ because I appreciate his  
22 observation that -- the Planning Board's observation -- that any buildings located along  
23 the west side of Georgia Avenue within the Overlay Zone would continue to be limited to  
24 90 feet in height. And I'm assuming that that is the Planning Board stating that it is its  
25 intent not to approve anything that would exceed 90 feet in height; because as I'm  
26 reading the ZTA, the ZTA does not specify that. Am I correct?

27  
28 Greg Russ,  
29 Yes. They would base everything on what the Master Plan -- Sector Plan actually states,  
30 which allows the 90 feet and then a step back to a higher height.

31  
32 Councilmember Leventhal,  
33 Okay. So an issue, Madame President and Madame Chair, that the PHED Committee  
34 may want to look at -- and this is in response to the testimony that I know we're about to  
35 get from the advocates for historical preservation in Silver Spring -- is whether this  
36 limitation of 90 feet would achieve the goal -- I haven't heard their testimony yet; but I  
37 know what they're going to say because we got an excellent letter from the Silver Spring  
38 Historical Society -- would achieve the goal of preserving those buildings for which it is  
39 clear that there is some historicity -- for example, the colonel's real estate and law office  
40 and some others. Greg or Gary, do you want to comment on that?

41  
42 Gary Stith,  
43 Well, you don't control preservation of historic properties through zoning. That's done  
44 through other processes in terms of designating specific buildings as historic; and that's  
45 done through the Historic Preservation Commission and the Planning Board, and



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1 ultimately could be included in the Master Plan which the Council would adopt. Zoning,  
2 whether the height is limited to 90 feet or 200 feet, wouldn't be the mechanism for  
3 preserving any historic property anywhere, much less on that side of Georgia Avenue.  
4 Councilmember Leventhal,  
5 Okay. That is a true statement and thoroughly non-responsive to my question. So the  
6 question is –

7  
8 Gary Stith,  
9 Sorry.

10  
11 Councilmember Leventhal,  
12 The question is whether the vision for the Ripley District that is contemplated in this  
13 ZTA, which the Planning Board has now told us it will interpret to preclude any height  
14 above 90 feet on the west side of Georgia Avenue –

15  
16 Gary Stith,  
17 Right.

18  
19 Councilmember Leventhal,  
20 -- whether or not we write it into the Zoning Code -- whether that vision and that  
21 directive from the Planning Board will achieve the purpose of allowing for the  
22 preservation of those buildings, whether or not they're designated as historic.

23  
24 Gary Stith,  
25 No. The answer is, "No." You don't preserve historic properties through zoning. I mean,  
26 the only way you could do it is if you said that the height on that side of Georgia Avenue  
27 couldn't be any higher than the existing building -- and even that wouldn't necessarily  
28 preserve the existing building. The way to preserve historic properties is through the  
29 process that the County has in place already for designating property specifically as  
30 being historic.

31  
32 Councilmember Leventhal,  
33 Okay. Again, the things you're saying are true; and I can't argue with them. But you and  
34 I had an exchange on this topic, and you told me that the plan for redevelopment of the  
35 Ripley District does not touch the structures that are referenced in the letter from the  
36 Silver Spring Historical Society. Can you expand on that?

37  
38 Gary Stith,  
39 There were two specific properties that you referenced in your e-mail to me. Right.  
40 Those were a property owned by Mr. Scandifio on the south side of Ripley at Georgia  
41 and –

42  
43 Councilmember Leventhal,



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1 Right. That's the colonel's old law office – Colonel Brookley. Right. The founder of Park  
2 and Planning that laid out the plan for the Beltway and East West Highway, and pretty  
3 much responsible for the look of Montgomery County today.

4  
5 Gary Stith,

6 -- and the Pyramid Atlantic property on the north side of Ripley. And I said that the  
7 current proposal that we've made for a redevelopment project in the Ripley District does  
8 not impact either one of those properties. Now, that's not to say that somebody else  
9 might not come along at some point -- although I have to point out, though, that the  
10 Sector Plan does call for Ripley Street to be widened. And if that were to be  
11 implemented, that would impact both of those properties.

12  
13 Councilmember Leventhal,  
14 Pyramid Atlantic and Mr. Scandifio's property.

15  
16 Gary Stith,  
17 Yes.

18  
19 Councilmember Leventhal,  
20 Okay. I say okay in that I've heard you. I don't think that's okay. I think we need to take  
21 a look at that, but –

22  
23 Gary Stith,  
24 But the current proposal that we've submitted for a redevelopment project in the Ripley  
25 District -- and you know what I'm talking about -- does not impact either one of those  
26 properties.

27  
28 Councilmember Leventhal,  
29 But it does impact some of the other ones referenced in the Historical Society's letter  
30 further south on Georgia.

31  
32 Gary Stith,  
33 Further south, yes. Right. None of which have been as designated historic.

34  
35 Councilmember Leventhal,  
36 Okay. Madame Chair and Madame President, if I may, I think it would be of great value  
37 to Councilmembers and the public to get more detail about those plans and those  
38 buildings and the streetscape on Georgia Avenue on November 5th when the PHED  
39 Committee takes up this issue.

40  
41 Council President Praisner,  
42 Right. I think it would be helpful not only to have that information that you've referred to,  
43 but also to have some review of the Master Plan and the process for historic  
44 designation; because this back and forth does speak to what was defined in the Master



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1 Plan and also what is the historic preservation process in the County. It would be  
2 helpful, I think, to include that.

3  
4 Councilmember Leventhal,

5 The more information, the better. This is an unusual ZTA in that we contort ourselves so  
6 hard with most ZTAs to claim we're not doing spot zoning. With this ZTA, there's no  
7 confusion where we're talking about. We know exactly where we're talking about. So  
8 there's no reason not to have more information about the plan and how these structures  
9 are affected. I'm a cosponsor of this ZTA. But I would just like to understand what is the  
10 ultimate effect on this streetscape on Georgia Avenue. The other point I just wanted to  
11 go ahead and make in public -- and I'll keep reiterating it, and I know you've heard me  
12 say it in private -- is whatever occurs in this area, we must ensure that Shepherd's Table  
13 and Progress Place are able to continue their services uninterrupted, and that a site is  
14 identified where those critically-needed services may continue prior to any  
15 redevelopment or demolition or new construction -- if I have anything to say about it.

16  
17 Council President Praisner,

18 Okay. I see no other lights, so let's move on to group two. Marcie Stickle, Silver Spring  
19 Historical Society; George French, speaking on his own behalf; Wayne Goldstein for the  
20 Montgomery Preservation, Inc.; Jason Gedeik, speaking on his own behalf; David  
21 Fogel, South Silver Spring Neighborhood Association; and Jane Redicker, Greater  
22 Silver Spring Chamber of Commerce. If you could all come forward, please. And,  
23 Marcie, you're first -- if you'd push the button in front of you please.

24  
25 Marcie Stickle,

26 INAUDIBLE [Mic not on]

27  
28 Council President Praisner,

29 Well, you have three minutes each. If you want us to -- if you want to keep talking, the  
30 two of you, in the context of that, staff will keep track of when you're done speaking how  
31 much time is left for Mr. French. But you would start with three minutes. Push the button  
32 in front of you, please. That's your maximum, Marcie, is three minutes.

33  
34 Marcie Stickle,

35 The Silver Spring Historical Society appreciates Valerie Ervin and Ben Stutz's e-mail of  
36 yesterday afternoon addressing our heritage, tourism, and preservation concerns along  
37 Georgia Avenue where Silver Spring's original Main Street and central business district,  
38 with its pioneering buildings, was born in the early 1900s. Currently, the Bill reads as a  
39 blanket ZTA raising allowable heights in the Ripley District and South Silver Spring to  
40 200 feet -- and see our previous statement below. After checking with Glenn Kreger,  
41 Ben quotes: "Glenn, please note that proposed ZTA 07-14 would allow maximum  
42 building height of 200 feet within the Ripley/South Silver Spring Overlay Zone; but  
43 buildings fronting directly along Georgia Avenue would still be limited to 90 feet by the  
44 CBD Sector Plan. They could then step back to 143 or whatever maximum height is  
45 ultimately approved under the ZTA. This is because the findings requiring project plan



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1 approval include conformance with the Sector Plan on pages 84 and 86 explicitly limit  
2 the height of buildings fronting directly on the west side of Georgia Avenue to 90 feet.  
3 And this has to do with assuring symmetry on both sides of Georgia Avenue. We  
4 respectfully request that this clarifying language, with attribution and exact quoting of  
5 the Sector Plan, be added to the ZTA 07-14 Bill so that there is no misunderstanding  
6 about where the 200 foot height allowance applies. Key County representatives are  
7 using the current bill's language and portraying in public presentations the ZTA as a  
8 blanket lifting to 200 feet throughout the Ripley District and along the Georgia Avenue  
9 frontage. Also in the 10/17 Planning Board staff report planner, Mr. Russ indicates that  
10 in South Silver Spring the 8000 block of Georgia Avenue -- which includes Mayorga,  
11 8040 Georgia Avenue, Crisfield's, Moorenko's -- could be "assembled" and a new  
12 comprehensive project built 200 feet high. Mayorga happens to enlive in one of our  
13 early heritage structures, the American Instrument Company, Amico, designed by  
14 prominent Montgomery County and Silver Spring architect Katherine Cutler Ficken, also  
15 the Silver Spring resident who designed Montgomery County schools, University of  
16 Maryland buildings, other public and commercial structures, and won architectural  
17 awards. Her father, Howard Wright Cutler, was another renown Montgomery County  
18 architect and Silver Spring resident and Aminko, among other scientific instruments, did  
19 four atom smashers for the Atomic Energy Commission. And Aminko is another vivid  
20 example, along with our Ripley District pioneering structures described below, of how  
21 Silver Spring is so fortunate to have the unique and magical ingredients for heritage  
22 tourism which is an intriguing and potent form of economic development. In fact through  
23 the fine efforts of Valerie Ervin and the Council's unanimous support, Silver Spring  
24 Historical Society for Historic Preservation Commission staff and the Silver Spring  
25 Regional Services Center are embarking on Silver Spring's Heritage Trail, utilizing the  
26 larger comprehensive signage that Council approved. Silver Spring Historical Society  
27 plans to celebrate these Georgia Avenue original Main Street structures and many  
28 others. Critically important is to carefully define "frontage" and "fronting" on Georgia  
29 Avenue in the bill to protect our heritage structures. How many feet deep is this? Glenn  
30 Kreger refers to buildings; but he does not refer to existing buildings. Among our  
31 significant buildings is Harry Duncan's art deco Little Tavern National Headquarters  
32 building, 8230 Georgia Avenue, which is Pyramid Atlantic, circa 1940. It is set back  
33 between Georgia Avenue and Dixon Avenues. It needs to be included in the "fronting."  
34 Depth dimensions are needed to be added to the bill. We also need to help keep intact  
35 the multi-cultural, small independent businesses and services on Georgia Avenue's  
36 west side.

37  
38 Council President Praisner,  
39 Your time is up. Mr. French, you may speak now.

40  
41 Marcie Stickle,  
42 From the Marvelous Gapbuster.

43  
44 Council President Praisner,  
45 You need to push the button in front of you.



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1  
2 George French,  
3 George French, 510 Albany Avenue in Takoma Park.  
4

5 Marcie Stickle,  
6 Starting here, "The Marvelous Gapbuster..."  
7

8 George French,  
9 "The Marvelous Gapbuster's Learning Center operates out of one of the earliest  
10 structures. It was built to last and includes a huge auditorium in the back. They love  
11 their home. We welcome NPR potential coming to Silver Spring. If this lifting of the  
12 height allowance to 200 feet takes place behind our irreplaceable heritage structures,  
13 which we will serve as our heritage portal, there is more than ample acreage to  
14 welcome NPR to the Ripley District. Silver Spring's original Main street of Georgia  
15 Avenue has the support and endorsement of the National Trust for Historic  
16 Preservation; Preservation Maryland, which is a statewide organization; Montgomery  
17 Preservation, Inc., countywide; and Historic Preservation Commission among others to  
18 promote and retain and enjoy Silver Spring's irreplaceable original Main Street, Georgia  
19 Avenue. We can have it all and prosper in Silver Spring if we all work together.  
20

21 Marcie Stickle,  
22 And we welcome comments.  
23

24 Council President Praisner,  
25 Thank you very much. Thank you to both of you. Mr. Goldstein.  
26

27 Wayne Goldstein,  
28 I'm Wayne Goldstein, speaking as President of Montgomery Preservation, Inc., (MPI)  
29 and as an individual. MPI owns the B&O Train Station in the Ripley District. Thus, we  
30 have an interest in this ZTA because of its potential impact on our designated historic  
31 property and on other designated and designatable historic properties along Georgia  
32 Avenue in the Ripley District and the adjacent part of South Silver Spring. While the  
33 ZTA may not affect the zoning and height limits along Georgia Avenue, the likelihood  
34 that the project and anticipated tenant that would benefit from this ZTA could include  
35 Georgia Avenue properties is a major concern. For the last five years, MPI and its local  
36 partner, the Silver Spring Historical Society, have done a tremendous amount of  
37 research and outreach on the early 20th century structures that line both sides of this  
38 stretch of Georgia Avenue. We began this as a result of the wholly inadequate survey  
39 done in 2002 of fifty-year-old structures in that central business district that skipped over  
40 most of these buildings. We now believe that these buildings would meet the criteria to  
41 be designated as part of an early twentieth century commercial historic district. We ask  
42 that the Council task MNCPPC historic staff to do this research in the near future. We  
43 also believe that these buildings would form the foundation of a unique heritage tourism  
44 destination now and in the future. In order to preserve these buildings to keep this  
45 eighty-year-old streetscape intact, I recommend that there be an amendment to this



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1 ZTA or a companion ZTA to allow for the opportunity to sell development rights of these  
2 buildings, and that the additional height created by ZTA 07-14 only be achieved through  
3 such buying or transferring of these development rights. After all, ZTA 04-01, which  
4 originally allowed additional height closer to the Metro station states, "The proposed  
5 development will provide additional public facilities and amenities beyond what could  
6 otherwise have been provided if the excess height were not approved." I believe that  
7 preserving this historic streetscape by requiring the purchase of such development  
8 rights is an appropriate and lasting amenity for this location. This section of Georgia  
9 Avenue is the best remaining historic commercial streetscape in Montgomery County,  
10 and allowing the construction of 90-foot buildings along this section would remove the  
11 best of the past in Silver Spring and the County. Although the CBD Sector Plan is  
12 woefully inadequate in recognized historic resources, however the language on page  
13 135 makes the case for valuing and preserving such historic resources. It's time to fulfill  
14 that part of the Sector Plan, and I'd be glad to read from this page if any  
15 Councilmembers are interested.

16  
17 Council President Praisner,  
18 Thank you very much. Mr. Gedeik, is it?

19  
20 Jason Gedeik,  
21 Good afternoon. My name is Jason Gedeik; address, 7915 Eastern Avenue, Apartment  
22 1007, Silver Spring, Maryland. I address the Council as a resident of South Silver  
23 Spring and one who is very much interested in the continued growth and revitalization of  
24 my neighborhood. I moved to Silver Spring because I wanted to live in an urban  
25 environment undergoing growth that provided an infrastructure for sustained new  
26 business, retail, and housing development. While this Zoning Text Amendment is a step  
27 in the direction towards smart growth, it does not go far enough to address the future  
28 needs of Silver Spring in order to compete long-term with other D.C. metropolitan cities.  
29 In order to establish this zone as an attractive alternative for new development, I  
30 suggest that the Council consider increasing the maximum building height to 250 feet or  
31 greater. As you all know, transit-oriented development is a very critical element of smart  
32 growth. With the nearby Silver Spring Transit Center about to break new ground, this  
33 transportation hub will be able to meet the increased capacity needs resulting from new  
34 development. It only makes sense that we increase density in a zone where it can be  
35 properly sustained. As a resident that walks by this area almost daily, it stands out as a  
36 stark contrast to the rest of the CBD that has been positively affected by the city's  
37 revitalization initiatives. Many of the storefronts have been long empty, decaying  
38 facades that belie the new development spanning this zone along areas like East West  
39 Highway and Ellsworth Drive. In other areas of this zone, decrepit single-story  
40 warehouse buildings line the Metro Railway tracks, while modern new developments,  
41 like the Bennington Apartments and Noah Headquarters, line the other side. These new  
42 structures exist within a zone that already allows for a maximum building height of 200  
43 feet, thereby providing a precedence to support the proposed ZTA changes for the  
44 Ripley/South Silver Spring Overlay Zone. Additionally, the businesses located along  
45 Georgia Avenue continue to struggle financially as Ellsworth Drive draws the lion's





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1 share of customers. Increased building heights in this zone would attract larger  
2 development projects, resulting in a dramatic boost in the potential customer base for  
3 this fragile business corridor. As a resident, it greatly enhances my quality of life by  
4 having a stable base of restaurants and retail that can thrive in South Silver Spring, not  
5 to mention more jobs and the ability to walk to work. For these reasons, I strongly  
6 support this ZTA as it applies to the Ripley/South Silver Spring Overlay Zone. I would  
7 also recommend that the Council consider the long-term socioeconomic needs of our  
8 County by increasing the maximum building height to 250 feet or greater. It is the right  
9 location, at the right time, and will lead Silver Spring into the right direction towards a  
10 successful future of sustained smart growth. The alternative: losing our competitive  
11 advantage to surrounding jurisdictions, placing greater strains on our environment, and  
12 making the creation of affordable housing and new jobs even more difficult. That would  
13 be a future that neither I nor the people in my neighborhood would want to be a part of.  
14 Thank you very much.

15  
16 Council President Praisner,  
17 Thank you very much. Mr. Fogel.

18  
19 David Fogel,  
20 Hello. I'm David Fogel, 7981 Eastern Avenue, #312, Silver Spring, Maryland. Thank you  
21 for letting me testify today on behalf of the South Silver Spring Neighborhood  
22 Association. First I'd like to acknowledge my neighbors who are here today also in  
23 support of my testimony, and ask them to please stand. Zoning Test Amendment No.  
24 07-14 would provide a maximum building height of 200 feet in any CBD-2 zoned  
25 optional method of development project that provides ground floor retail in Silver Spring  
26 Central Business District. This amendment would give increased density and retail  
27 opportunities to future development in South Silver Spring and the Ripley District. The  
28 core tenet of smart growth is to concentrate commercial and residential development in  
29 locations with a solid public transportation infrastructure. One of the region's best  
30 transportation centers is downtown Silver Spring with easy access to Metro rail, Metro  
31 bus, MARC train, and an infrastructure suitable for pedestrians and bicycle riders.  
32 Zoning Test Amendment No. 07-14 exemplifies the smartest of smart growth policy; and  
33 I'm here today to ask you to support it. The residents of South Silver Spring urgently  
34 demand more commercial office space in Silver Spring Central Business District. Silver  
35 Spring has the lowest office vacancy rate in the Washington Metropolitan Region; and  
36 an increase in building height would increase the office space available for new  
37 businesses. Many residents desire more office space in the central business district  
38 because they relish the possibility of working near their home, thus affording them the  
39 ability to walk to work. Residents of South Silver Spring are also excited with the  
40 anticipation of the new business prospects which may choose to move into South Silver  
41 Spring if the Zoning Test Amendment is approved. At the heart of this discussion is  
42 whether it is wise to increase density in areas where infrastructure can support it and  
43 encourages it. We believe that the Zoning Test Amendment correctly answers that  
44 question. Downtown Silver Spring is an efficient urban transportation center which



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1 should be nurtured for the type of commercial growth which real estate statistics show is  
2 demanded. Thank you.

3  
4 Council President Praisner,  
5 Thank you. Jane?

6  
7 Jane Redicker,  
8 Madame President, thank you for adding me to the list. I appreciate that. Members of  
9 the Council, good afternoon. My name is Jane Redicker; I'm President of the Greater  
10 Silver Spring Chamber of Commerce, 8601 Georgia Avenue, Silver Spring. I'm here  
11 today in support of Zoning Test Amendment 07-14 which would increase the maximum  
12 allowable height to 200 feet in the Ripley District – particularly for those projects that  
13 include ground for retail. We believe that this is the right ZTA for the right place at the  
14 right time. Ripley District is in the center of the Silver Spring CBD; and if you follow the  
15 analogy of the tent which we heard from Gary Stith, it is actually in the center of the tent  
16 at the highest point of the pole. It's also quite literally next to public transit; specifically,  
17 to the future entrance of the Transit Center. Maximizing density close to major transit  
18 centers is smart growth and would meet a long-standing County policy of concentrating  
19 development in these areas. Building heights of up to 250 feet are permitted across the  
20 tracks in Noah, as we've already heard, and in areas that fall within 800 feet of the  
21 Metro Station. The Ripley District is just beyond this, and we believe that that  
22 measurement's conservative. We agree with the Silver Spring Regional Center that the  
23 walking distance ought to be calculated from the entrance to the new transit facility  
24 because people have been shown to be willing to walk even longer distances. The  
25 Chamber's particularly pleased to see that this ZTA encourages the creation of  
26 additional retail. Requiring that mixed-use projects set aside the first floor for retail in  
27 order to take advantage of the additional height is something we strongly support. The  
28 Chamber has long been concerned that current zoning regulations do not do enough to  
29 encourage a vibrant ground-floor retail community in mixed-use projects. We believe  
30 that the Ripley District is large enough to accommodate a core of shops that could  
31 become a retail destination. It's an ideal place to encourage retail. In conclusion, the  
32 Chamber recognizes the Ripley District as one of the next redevelopment opportunities  
33 in Downtown Silver Spring. It presents a unique opportunity to encourage mixed use  
34 close to transit services in the center of Silver Spring. It has the potential, as my  
35 colleague David has said, to become a neighborhood where people can live, work,  
36 shop, play, and have access to public transportation or walk. We urge your support of  
37 this ZTA, which will make that vision of this area a reality. Thank you.

38  
39 Council President Praisner,  
40 Thank you all very much. There are no other lights, so thank you very much for your  
41 testimony. And as we conclude this public hearing, we will move back to the Growth  
42 Policy discussion from this morning. We had -- and invite Dr. Hanson and folks from the  
43 Planning Board to join us at the table. Let me just review where we are. I had hoped  
44 we'd have a little more progress this morning, but maybe things can still evolve as we  
45 go this afternoon. The Council this morning agreed that the Growth Policy would go into



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1 effect or be applied immediately after adoption, not next July. We agreed that we would  
2 use the five-year test; that the program capacity is 105% with a 120% as the threshold  
3 for residential moratorium payment. We agreed that we would implement a staging  
4 process; and we heard that Montgomery County public schools have agreed that the  
5 program capacity is a two-year program capacity with the acknowledgment that if  
6 additional capacity is provided, that would affect the program capacity. But absent that,  
7 the program capacity as designated is, I guess one could say, secured at that number  
8 for a two-year period of the Growth Policy and would be within that Growth Policy. The  
9 next item for our consideration, I believe, is the issue of the amount of the fee. And that  
10 was discussed both by -- may have been discussed by the MFP Committee, as well as  
11 the PHED Committee; but the amount of the School Facilities Payment as proposed is  
12 \$32,524 for an elementary seat; \$42,351 for a middle school seat; and \$47,501 for a  
13 high school seat. These numbers are the amounts that were recommended by the  
14 Planning Board; the Board of Education; and oh, by the way, Council staff. That is a  
15 majority 2-0 position by the PHED Committee. Councilmember Floreen took no position  
16 on the issue. And there are additional issues associated with the payment that it's  
17 appropriate for us to discuss. The one that came up during the Council worksession  
18 relates to whether there should be a requirement for a payment in enterprise zones. The  
19 Council did not -- or the Committee did not discuss that issue; and the staff -- and I'm  
20 not sure if the Planning Board or the School System either weighed in on that issue. We  
21 can talk about that. But Council staff recommended that for market rate housing that it  
22 be required. Obviously, an alternative is to continue to exempt residential development.  
23 The next issue was the use of School Facility Payment. Councilmember Elrich and  
24 myself recommend that the payment be used to add capacity in the cluster at the grade  
25 level where it is needed. That is also the recommendation of Council staff. The Planning  
26 Board, I do not believe, made a position about that; but when we get to it, we can hear.  
27 The Board of Education wanted -- and Councilmember Floreen supported -- using it  
28 anywhere in the County at any grade level. Right now, the payment is used to add  
29 permanent capacity in the cluster; but it does not have to be used at the specific grade  
30 level where the payment is required. And the final issue is the issue of whether there  
31 should be de minimis developments within the School Adequacy Test. Council staff and  
32 the Board recommended it. The Planning Board did not have a position on this initially.  
33 The Board of Education does not oppose it, and the recommendation from the majority  
34 of the Committee is to have a development of three or fewer units to be exempt from the  
35 payment process. Councilmember Floreen would have that at ten or fewer units, and  
36 currently there is no de minimis exemption. As we heard this morning, there has been  
37 no payment paid; but there is also, in the current policy, no exemption possible. So this  
38 would be, if one could argue, a loosening of the requirements even though it's not been  
39 applied as yet. There are quite a few lights; and I think the first light I saw was  
40 Councilmember Berliner's.

41  
42 Councilmember Berliner,  
43 Madame President, at the appropriate time, I will offer an amendment with respect to  
44 the payment level.  
45



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1 Council President Praisner,  
2 Yes, you had indicated that this morning.

3  
4 Councilmember Berliner,  
5 And if this is the appropriate time, why don't I proceed? This has been the one -- I was  
6 the sponsor in the MFP Committee with respect to the School Impact and  
7 Transportation Impact Tax being at 90% of marginal cost. And I believe that that's the  
8 appropriate level for those taxes. This piece has always been one that was a little  
9 troubling. And I recall Councilmember Leventhal's colloquy with the Chair with respect  
10 to this item, and that in effect what we currently are requiring is for those areas that  
11 "jump the queue" -- Mr. Chairman, I believe, was your phrase -- that want to go forward  
12 when we don't have the facilities in place, that it may be appropriate to require in effect  
13 200% of marginal costs or double marginal costs. The example that came to my mind  
14 with respect to something very comparable is with the LATR (Local Area Transportation  
15 Review), where we currently have a proposal before us that suggests that if people  
16 want to go forward in that context -- where we have already exceeded our capacity --  
17 that we require 150% mitigation. And that to me strikes me intuitively as a fairer number,  
18 if you will, to require in this context as well. That is, to ensure that the combination of the  
19 School Impact Tax and the School Facility Payment does not exceed 150%. I have  
20 conferred with staff with respect to achieving that result. And staff advises me that since  
21 the recommendation of the PHED Committee was in fact to be at -- excuse me, of the  
22 MFP Committee with respect to the School Impact Tax -- was to be at 90%, that one  
23 would take the numbers that you see here in the Committee recommendation, middle  
24 line if you've got your chart -- I would suggest we have that piece of paper before us,  
25 which is the supplemental packet worksession two-page document. It says, "Agenda  
26 Item 7, 9 through 10, October 30, 2007 Worksession Supplemental Packet." Don't have  
27 that? Everybody have that document? Because I believe this is the operative document  
28 -- am I correct staff? -- that this is the document that we're working off of with respect to  
29 the number. And you'll see the number that the Committee recommends is, again,  
30 under the School Facility Payment -- which is the third from the right. And in the middle  
31 is the number that is currently before us -- which, for example, in the single-family  
32 detached Bethesda Chevy Chase area, Whitman Community, the recommendation is to  
33 go from \$4,000 to \$10,408, for an increase of \$6,408. Do my colleagues see that?

34  
35 Royce Hanson,  
36 For that particular --

37  
38 Councilmember Berliner,  
39 For that particular one, and then you just keep going down and you'll see the --

40  
41 Council President Praisner,  
42 Well, for a single-family detached --

43  
44 Councilmember Berliner,  
45 That's correct.



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1  
2 Council President Praisner,  
3 -- is the point that I think Mr. Faden wanted to make.

4  
5 Councilmember Berliner,  
6 Yes. And it varies; as you can tell, these numbers change depending on the area. They  
7 change depending on whether it's single-family versus multifamily -- all of those factors.  
8 So my recommendation based on staff's response to, "What would it take to get to  
9 150% of marginal cost?" was to reduce the Committee recommendation number by  
10 one-third.

11  
12 Glenn Orlin,  
13 Yeah, can I jump in at this point?

14  
15 Councilmember Berliner,  
16 You may.

17  
18 Glenn Orlin,  
19 Mr. Berliner asked me about this this morning; and my instant answer was to reduce it  
20 by one-third; but it's actually -- and I apologize for this, Mr. Berliner -- it actually would  
21 reduce it by 40%, which is what you actually thought in the first place. You were right. I  
22 was multiplying; I should have added.

23  
24 Councilmember Berliner,  
25 My math skills being what they are --

26  
27 Glenn Orlin,  
28 Your math stands.

29  
30 Councilmember Berliner,  
31 I'm always prepared to defer to others. I thought your number sounded -- all right. So we  
32 would reduce this number by --

33  
34 Glenn Orlin,  
35 40%.

36  
37 Councilmember Berliner,  
38 -- by 40%. Again, the result of reducing the number by 40% would be to achieve a  
39 combined School Impact Tax and Payment at 150% of marginal costs, which I think is  
40 fair in exchange for "jumping the queue" -- making an additional contribution, but not  
41 having something so onerous that if you look at some of these numbers now -- which I  
42 know we've all looked at -- this particular payment, which probably won't be paid all that  
43 often as we've discussed, is what drives these numbers to the level of \$65,000 in some  
44 instances -- to \$56,000 in some instances. And if you reduce this number so that you  
45 get to what I believe to be a more appropriate level in and of itself, you end up being at



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1 something on the order of – your max is going to be something on the order of \$56,000;  
2 and it's going to go down considerably. So to the extent to which people are concerned  
3 about total impacts, this -- I believe -- is the most effective way of addressing that and  
4 does so with what I believe to be some level of integrity with respect to what is fair to  
5 ask for people who are jumping the queue. So with that, I will stand down and be happy  
6 to respond to any questions my colleagues have.

7  
8 Council President Praisner,  
9 Let's see. I see Vice President Knapp; and then, Mr. Orlin, did you want to comment  
10 first?

11  
12 Glenn Orlin,  
13 I just was going to say, now I did the math correctly in terms of what this means -- the  
14 numbers on the bottom of page 2. What Mr. Berliner is suggesting now is that the  
15 School Facilities Payment per elementary school seat would be \$19,514.

16  
17 Council President Praisner,  
18 \$19, 514.

19  
20 Glenn Orlin,  
21 For middle school, it would be \$25,411.

22  
23 Council President Praisner,  
24 \$25,411.

25  
26 Glenn Orlin,  
27 2-5-4-1-1. And high school, \$28,501.

28  
29 Council President Praisner,  
30 \$28,501. Elementary, \$19,514; middle, \$25,411; high school, \$28,501.

31  
32 Glenn Orlin,  
33 Correct.

34  
35 Council President Praisner,  
36 Okay. Vice President Knapp.

37  
38 Council Vice President Knapp,  
39 Thank you, Madame President. And we don't have Mr. Crispell.

40  
41 Council President Praisner,  
42 No, we don't. I'm not sure.

43  
44 Council Vice President Knapp,



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1 Okay. Because my question actually tied to our conversation from this morning where  
2 presumably what we're trying to accomplish is actual capacity. And so I wanted to try  
3 and get a sense of given the numbers that he articulated that was required -- that the  
4 School Board felt was required to actually move ahead with a four-room addition -- do  
5 these numbers actually get us to a four-room addition if you actually ended up at -- was  
6 it 92 students? And I just -- I don't know. That's one of the questions I have outstanding.  
7 I think that's important for us to know that; because if it doesn't actually do that, then the  
8 question is, "What are we actually paying for?" And then in turn it would determine Mr.  
9 Berliner's then modifications; but then we can at least understand what percentage  
10 we're paying for. So if then why we can get the answer to that question.

11  
12 Glenn Orlin,  
13 I don't see Bruce here, but Karl can --

14  
15 Council President Praisner,  
16 Maybe Karl could comment, but can some staff member on the fifth floor check on  
17 whether Bruce is going to join us this afternoon? Mr. Orlin, maybe --

18  
19 Glenn Orlin,  
20 I was planning to.

21  
22 Council President Praisner,  
23 Check with somebody. Hmmm?

24  
25 Royce Hanson,  
26 He might come back. We'll see.

27  
28 Council President Praisner,  
29 There's nobody here from the school system. Karl.

30  
31 Karl Moritz,  
32 But I can at least point out that the Planning Board in developing the School Facilities  
33 Payment and the Impact Tax was basing it on the cost of school facilities themselves.  
34 And so 100% or 150% or 200% -- that is of the cost of building capacity.

35  
36 Council Vice President Knapp,  
37 Theoretically.

38  
39 Karl Moritz,  
40 Yes.

41  
42 Council Vice President Knapp,  
43 Well, that's what I want to get a sense of. Because, I mean, we can have a nice  
44 theoretical conversation --  
45



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1 Karl Moritz,

2 Whether there's practical regress, I would not be able to answer that.

3  
4 Council Vice President Knapp,

5 Okay. That's what I want to try and get to. Okay, well we'll wait and when we get that –

6  
7 Council President Praisner,

8 Hold this and hopefully – I mean, we have many, many decisions we have to make.

9  
10 Council Vice President Knapp,

11 Right.

12  
13 Council President Praisner,

14 And we can hold this and hopefully have somebody from the School System here.

15 There are no lights on that issue. Why don't we just hold that at this point until we get  
16 some response from the School System? Other issues, Council Vice President Knapp?

17  
18 Council Vice President Knapp,

19 I guess we can kind of did all these together -- but use of School Facilities Payment –

20  
21 Council President Praisner,

22 Yes.

23  
24 Council Vice President Knapp,

25 I guess this is more of a question for Dr. Orlin. The use of the facilities payment – I  
26 mean, practically, if we have the facilities payment dedicated to facilities, it comes into  
27 kind of the school pot. And so whether it goes directly to that school or goes to create  
28 capacity for other schools within that CIP, it really doesn't make a difference because it  
29 still expands the overall total of the pot. If they've identified the project as a capacity  
30 project, and we have the resources to pay for it either directly – because we earmarked  
31 it -- or because it just increases the pot that we have, it really doesn't make a difference;  
32 does it?

33  
34 Glenn Orlin,

35 Well, in that respect, it doesn't. But if the idea is you're trying to meet a specific APF  
36 problem, then it does. Because if, for example, a development goes through local area  
37 review of transportation and the need is to improve that intersection, one could argue,  
38 "Well, let's just take that money and put it in some other transportation project that adds  
39 capacity further away." But the question is, "What is the purpose of the money that  
40 you're collecting?"

41  
42 Council Vice President Knapp,

43 I know; but effectively, you end up with the Clarksburg Development District issue – or  
44 not Development District, the Clarksburg Impact Tax issue – which, okay, we can say it  
45 goes to Clarksburg, which in "theory" then parks that money there. But if we were going





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1 to have to address the capacity issue anyway because we're going to have to address  
2 capacity because that's the highest priority things we fund outside of health and safety,  
3 you are still going to address the capacity issue. So it really doesn't make a difference. I  
4 mean you can -- it's an accounting issue to say, "We put it here with this name on it so  
5 we can say this money went to that project"; but from a fungibility perspective, it really  
6 doesn't make a difference because it just goes in. We're going to address capacity, and  
7 that will allow us to address that capacity.

8  
9 Glenn Orlin,

10 I won't disagree with you that from a fungibility standpoint it probably doesn't make that  
11 much difference.

12  
13 Council Vice President Knapp,

14 So it's just an accounting issue that says we put it here?

15  
16 Council President Praisner,

17 Mr. Faden wants to weigh in.

18  
19 Glenn Orlin,

20 It's more than accounting. It's the rationale of why you have the fee in the first place.

21  
22 Mike Faden,

23 It's keeping the lawyers from being too nervous. This is essentially a nexus issue; and  
24 we don't know -- because it's a payment. It's not an Impact Tax where there's no need  
25 for a tight nexus. We don't know how tight this nexus has to be, and we wouldn't really  
26 know until it was litigated. But we feel more comfortable -- especially if it is fungible, you  
27 know, if the net result isn't too different -- we feel somewhat more comfortable tying the  
28 payment to the cluster it originated in.

29  
30 Glenn Orlin,

31 And the level.

32  
33 Mike Faden,

34 And the level. But at least --

35  
36 Council Vice President Knapp,

37 Okay. So as far as policy perspective, there really is -- I mean the fungibility still  
38 remains; it's just we want to protect ourselves from litigation.

39  
40 Mike Faden,

41 Yes.

42  
43 Council President Praisner,

44 Well, if you had a project, you would show in the PDF -- as a source of funding -- the  
45 School Facilities Payment, if there was a School Facilities Payment. And the extent to



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1 which you were going to do that project anyway that -- you're correct -- that presumably  
2 that would then free up some money to be used elsewhere that was going to be the  
3 County's contribution.

4  
5 Council Vice President Knapp,  
6 Right -- which it would have done anyway.

7  
8 Council President Praisner,  
9 But the question is if you were going to do that project anyway -- and you might not be  
10 able to do that project without the contribution from the -- it might increase your Capital  
11 Budget because you're doing this project as opposed to not doing it all. That's the nexus  
12 issue.

13  
14 Council Vice President Knapp,  
15 No, I understand. But my point is that if you're going to have a School Facilities  
16 Payment -- so you're going to already collect the resources -- so the capacity issue is  
17 still going to have to be addressed because we've already articulated that. So you're still  
18 going to have those resources there. It's capacity. You're going to have the money. So  
19 you're just -- it's -- if you don't have enough money, you're still not going to do that  
20 capacity project. You might not.

21  
22 Glenn Orlin,  
23 Not.

24  
25 Council President Praisner,  
26 Well, you might not.

27  
28 Council Vice President Knapp,  
29 There's always that option, I suppose; we haven't seen it yet.

30  
31 Glenn Orlin,  
32 An example in Clarksburg. Clarksburg there -- as you noticed from this morning -- the  
33 area is still well above the 105-120%. The School Facility Payment would go into effect;  
34 money would be collected. But the School System hasn't identified projects yet to build.  
35 The recommended CIP from the Superintendent has one addition at one elementary  
36 school. It has some major additions or new projects at the middle school and high  
37 school level there -- as well as elementary school -- but they're all in facility planning. So  
38 it'll be several years before they're done. Now, the School Facility Payment -- we talked  
39 this morning about how that's actually paid at building permit. So it depends how fast  
40 someone goes through and gets a building permit. But it's very possible that the money  
41 that's actually paid for the School Facility Payment is not going to be there at a time  
42 when there's actually a project the School System's identified to build. There may be a  
43 couple year lag. So it will have to stay there in a pot, under the proposal from the  
44 Committee and Council staff, until there is a project that can be funded.



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1 Council Vice President Knapp,  
2 Still seems like an accounting issue, but okay.

3  
4 Council President Praisner,  
5 Councilmember Leventhal.

6  
7 Councilmember Leventhal,  
8 Well, I'm with Mr. Knapp in that this would be more persuasive as a nexus if in fact we  
9 were using something other than a fairly random average of what a typical house of "X"  
10 square feet generates. You're not like making a record. George Leventhal buys his  
11 house; he has a twelve-year-old and an eight-year-old, and therefore you need middle  
12 school seats and you need elementary school seats. You don't know who's going to buy  
13 this house. So there isn't a real nexus; it's a formula the Planning Board has come up  
14 that says your typical house of this size on average generates a certain number of  
15 seats. And so the concern is, "Are we going to be sitting on money that we don't spend  
16 when we need capacity now until we find just the right jigsaw puzzle piece that meets  
17 exactly the right combination of middle school or elementary school or high school  
18 seats?" It seems unwise; it seems like we're parking money that would be better spent  
19 to increase capacity as soon as we can do that.

20  
21 Glenn Orlin,  
22 If I can answer -- every forecast that's done, whether it's for the Transportation Test or  
23 the School Test, is based on an average. It's an average trip generation; it's an average  
24 trip length; it's an average idea as to where people might be going. It's all based on  
25 averages. So if you have a problem with that, we have a problem with all of this. The  
26 question is --

27  
28 Councilmember Leventhal,  
29 Many of us do.

30  
31 Glenn Orlin,  
32 I mean it was all the tests that we've ever done. I mean what we at least try to do here is  
33 try to strike what is the mean of maybe a lot of random possibilities.

34  
35 Councilmember Leventhal,  
36 Okay, Glenn. I'm not actually interested -- I don't want to debate you. But the point  
37 remains that the suggestion that there's some absolute precision here as to precisely  
38 how many high school, middle school, or elementary school seats are needed would be  
39 a false suggestion. There is not precision. So the idea that there's a very clear nexus  
40 and that therefore we're going to avoid a lawsuit because we precisely calculated -- you  
41 know, Johnny's going to high school and Susie's going to middle school -- it's not going  
42 to be like that.

43  
44 Council President Praisner,



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1 No, I don't think it's the precise calculation of the dollar amount; it's where you spend  
2 the dollar amount that is the issue.

3  
4 Councilmember Leventhal,  
5 But \$42,000 doesn't get you anything. So it's -- you know -- it doesn't get you a seat. I  
6 mean, it's all made up. \$42,000 is nothing. You don't increase capacity with \$42,000.  
7 You need many, many multiples of \$42,000 before you do actually anything. So to say  
8 that, "We're hanging onto this \$42,000 until the right opportunity arises," seems to me to  
9 introduce a layer of, you know, extra shuffling of paperwork in MCPS and at Planning  
10 Board that is kind of redundant and extraneous.

11  
12 Council President Praisner,  
13 Dr. Hanson, you wanted to comment.

14  
15 Royce Hanson,  
16 Just a point on this. The Nexus Test does not require sort of minute precision; it  
17 requires a reasonable relationship between what's exacted and what's being done. As  
18 Glenn pointed out, all of these numbers are based on average or sort of typical case. I  
19 think the other point is that it's true that \$42,000 -- or whatever else, whatever the  
20 number the Council comes up with might be -- if it's one unit, will not produce one more  
21 seat in the school. It has to be banked for others. But the typical subdivision, which  
22 might include 50 to 100 to 200 to as many as 300 or 400 units, would produce a  
23 substantial amount of money that could go into the construction of the necessary  
24 additional facilities. So while the numbers are calculated on the cost-per-student that  
25 would be generated by a development, and it would basically take three or four single-  
26 family units to produce the one student fee, that really has to be multiplied when you're  
27 looking at a subdivision by all the number of units that are in that subdivision.

28  
29 Council President Praisner,  
30 Okay. Councilmember Floreen?

31  
32 Councilmember Floreen,  
33 Well, Madame President, Mr. Crispell is here. So he could perhaps answer --

34  
35 Council President Praisner,  
36 Well, I was going to go to him after -- your light was on, though.

37  
38 Councilmember Floreen,  
39 Well, I'm having difficulty following the conversation. How are we going to proceed? Are  
40 we going to just vote on each piece of this?

41  
42 Council President Praisner,  
43 Just like we did this morning, Nancy.

44  
45 Councilmember Floreen,



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1 I have some points I want to raise about affordable housing, and maybe I'll just hold  
2 them till we get to that after the Enterprise Zone. I just wanted to understand how you're  
3 –

4  
5 Council President Praisner,  
6 I'm dealing with each of the items that staff has here –

7  
8 Councilmember Floreen,  
9 One at a time?

10  
11 Council President Praisner,  
12 Yes –

13  
14 Councilmember Floreen,  
15 Okay, great.

16  
17 Council President Praisner,  
18 -- which is what we did this morning. And then we'll see if there's any other issue that's  
19 outstanding that relates to the School Test that folks have.

20  
21 Councilmember Floreen,  
22 Sure. Okay.

23  
24  
25  
26 Council President Praisner,  
27 And then we'll move to –

28  
29 Councilmember Floreen,  
30 Just trying to understand –

31  
32 Council President Praisner,  
33 Sure.

34  
35 Councilmember Floreen,  
36 -- the rhythm of this funding.

37  
38 Council President Praisner,  
39 Okay, same rhythm we had this morning. Okay, let's go back to Roger. Would you like  
40 to phrase your question for Mr. Crispell to comment on so he hears it fresh?

41  
42 Councilmember Berliner,  
43 Quite frankly, Madame President, I -- in this moment -- can't recall the question that I  
44 had.



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1 Council President Praisner,  
2 Well, maybe it was his reaction – you wanted, or someone wanted his reaction –

3  
4 Councilmember Berliner,  
5 I believe it was Councilmember Leventhal or Councilmember Knapp –

6  
7 Council President Praisner,  
8 Okay. Councilmember Knapp and Councilmember Leventhal asked for and would  
9 appreciate your comments or reactions to Councilmember Berliner's comments about  
10 first of all the dollar amounts – which he is proposing – that are lower than what the  
11 School System and the Planning Board proposed. Let me just go over the number, and  
12 then I'll turn to Council Vice President Knapp. What Councilmember Berliner is  
13 proposing is rather than the \$32,524 for each elementary school seat, an amount --  
14 \$19,514, which I believe is about 40% in combination?

15  
16 Glenn Orlin,  
17 It's 60% --

18  
19 Council President Praisner,  
20 60%.

21  
22 Glenn Orlin,  
23 -- of this number. And if you add that to the 90% cost average, it gets you to 150%.

24  
25  
26  
27 Council President Praisner,  
28 The Impact Tax – you get to the 150%.

29  
30 Glenn Orlin,  
31 Right.

32  
33 Councilmember Berliner,  
34 The objective, again, was as opposed to a 200% of – excuse me -- of -- currently what  
35 we are doing is 200%, and this would get to 150%.

36  
37 Council President Praisner,  
38 In combination with the Impact Tax. The middle school level would be \$25,411; and the  
39 high school amount would be \$28,501 per seat. So I think what Vice President Knapp  
40 and Councilmember Leventhal were interested in is any reactions from the School  
41 System, and I'll let the Council Vice President Knapp phrase his question in the way  
42 he'd like.

43  
44 Council Vice President Knapp,



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1 Well, I know, and then just the reaction to that. But before we get to that, you'd indicated  
2 this morning that before the School System generated terms to go ahead with an  
3 addition, you look at being able to do four rooms --which equates to I think you said 92  
4 students, roughly. And so my sense was, since we're trying to figure out how we  
5 actually build additional capacity, do these numbers actually get you the type of  
6 resources that allow you to go ahead with that four-room addition? Or, subsequent to  
7 our actions this morning, do they get you the numbers that allow you to move with  
8 smaller since we've approved policy that actually recognizes capacity at a lower  
9 number? And then, depending upon what the answer to that is, then what does the  
10 change that we've just seen do?

11  
12 Bruce Crispell,  
13 Right. Okay. I apologize for getting back late.

14  
15 Council President Praisner,  
16 That's okay.

17  
18 Bruce Crispell,  
19 We're getting a CIP out at the same time.

20  
21 Council Vice President Knapp,  
22 You actually have a job to do?

23  
24 Council President Praisner,  
25 You're trying to juggle multiple tasks.

26  
27  
28  
29 Bruce Crispell,  
30 Right.

31  
32 Council President Praisner,  
33 We appreciate your being here --

34  
35 Bruce Crispell,  
36 Thank you.

37  
38 Council President Praisner,  
39 -- and appreciate the Superintendent and the School Board loaning you to us.

40  
41 Bruce Crispell,  
42 That's fine. These payments -- the School Impact Tax and these or lower ones, it seems  
43 to me -- will only be part of the solution. And they're only part of the cause of the need  
44 for an addition by the same token. So, I mean, the Board already adopted a resolution  
45 supporting the School Facility Payments at the rates the Planning Board recommended.



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1 So I can't -- I don't want to go against that. I think that the less you collect, the less able  
2 we are to pay for the cost of the growth.

3  
4 Council Vice President Knapp,  
5 I guess I don't necessarily -- part of what we're trying to do, I think, is you're going to  
6 have to manage expectations, too. And so what I don't want to have happen is say,  
7 "See, we've passed these numbers. These numbers will allow us to actually build the  
8 additional capacity." And I just want to make sure that if we have some idea of what the  
9 delta is, then we at least can be straightforward and tell people, "Yes, this gets us part  
10 way down that road, but it doesn't solve the problem."

11  
12 Bruce Crispell,  
13 No, and I think additions are, you know, millions of dollars.

14  
15 Council Vice President Knapp,  
16 Right.

17  
18 Bruce Crispell,  
19 And a subdivision that comes in and maybe contributes a few hundred thousand, it's not  
20 going to be maybe even half or a third of the cost of an addition. And I think people have  
21 to realize that these School Facility Payments in the clusters are not going to  
22 immediately cause a construction crew to go on-site and start building capacity. It's  
23 going to take the County to come in with the lion's share of the funding for those  
24 projects. It's just the marginal cost of their additional student generation. And I think, you  
25 know, that was a good principle to base the School Facility Payment on -- low marginal  
26 costs.

27  
28  
29  
30 Council Vice President Knapp,  
31 And so then if we have a proposal that lowers that, then it just gets us less of that  
32 overall number, but --

33  
34 Bruce Crispell,  
35 Right. Right.

36  
37 Council Vice President Knapp,  
38 Okay, but still more than we might have had otherwise?

39  
40 Bruce Crispell,  
41 Right.

42  
43 Council President Praisner,





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1 Do either of you have comments about the issue of relationship of the Impact Tax as a  
2 total payment issue -- which is, I think, what Councilmember Berliner was combining the  
3 two from that perspective. Do either of you have any comments on that point?  
4

5 Royce Hanson,

6 Well, I can only I guess repeat the point that I've made before; that when the Board  
7 considered this, we looked at the Impact Tax as the shared marginal cost of the  
8 improvements that are needed to the system and, consequently, can be spent  
9 anywhere. The Impact Fee -- the Facility Fee or payment -- is indeed for the project that  
10 wishes to move ahead and therefore pay for the marginal addition to the facilities that  
11 serve that specific development in that cluster.  
12

13 Council President Praisner,

14 Okay. Did you make a motion, Roger? I just want to be clear. Are you making a motion,  
15 or do you want to see other things first and just leave that on the table? I wasn't sure  
16 where you were on this issue.  
17

18 Councilmember Berliner,

19 I'm ready to roll.  
20

21 Council President Praisner,

22 Okay. Is there a motion? Pardon me? Ready to roll? Councilmember Berliner has made  
23 a motion that the School Facilities Payment be increased from the \$12,500 per student  
24 at any grade level to: at the elementary level, \$19,514; the middle school level, \$25,411;  
25 and at the high school level, \$28,501. Is there a second to that motion?  
26

27 Councilmember Floreen,

28 Second.  
29  
30  
31  
32

33 Council President Praisner,

34 Okay. It's been moved and seconded by Councilmember Floreen. Further discussion on  
35 the item at this point?  
36

37 Council Vice President Knapp,

38 Madame President, at this point --  
39

40 Council President Praisner,

41 Yes?  
42

43 Council Vice President Knapp,

44 I want to abstain from this at this point just because I -- until we begin to see all of the  
45 other numbers. And so this may make sense, it may not make sense. I'm just not sure in



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1 what context we look at this number relative to the other numbers we're going to  
2 address. And so I'm abstaining until we can get to the back end of it and see how it all  
3 adds up.

4  
5 Council President Praisner,  
6 Okay. Councilmember Andrews?

7  
8 Councilmember Andrews,  
9 Thank you, Madame President. I think it's important to specify -- because when we talk  
10 about the cost of a seat, I think it's important. It's been mentioned -- but I don't know that  
11 it's been mentioned specifically -- that you're looking at a number that would be divided  
12 among however many homes it takes to produce that seat.

13  
14 Royce Hanson,  
15 That's correct.

16  
17 Councilmember Andrews,  
18 So for a single-family detached home, the assumption is it takes three homes to  
19 produce one elementary school seat. So that the cost would be a third of whatever the  
20 elementary school seat is determined to be for a single-family detached home that is  
21 required to make this School Facilities Payment. And I just don't know that it's been -- I  
22 think it's important to make that real clear in terms of describing how it works.

23  
24 Council President Praisner,  
25 Councilmember Berliner?

26  
27 Councilmember Berliner,  
28 I appreciate Councilmember Andrews' observation in that regard. That's why I was  
29 working really off the supplemental packet worksession sheets; because from my  
30 perspective, it was that column that talks about the School Facility Payment, which I  
31 understood was, if you will, a per-unit cost. And that is -- so I'm working off, if you will,  
32 that \$10,000 number; and those are the numbers that I think are most relevant for  
33 people's consideration.

34  
35 Council President Praisner,  
36 Councilmember Ervin?

37  
38 Councilmember Ervin,  
39 Just a point of clarification. Where exactly were you looking in the packet,  
40 Councilmember Berliner, because I'm still confused about how you got these numbers?

41  
42 Council President Praisner,  
43 On page 2 of the packet -- oh, I'm sorry. He was looking at this -- the supplemental,  
44 Valerie. The one that says, "Worksession Supplementary Packet." It's 7, 9, to 10. Okay?  
45 Okay. Councilmember Berliner? Oh, okay. Further discussion? All in favor of the motion



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1 to increase the School Facilities Payment from -- to the numbers that were indicated,  
2 please indicate by raising your hand. [Show of hands] Councilmembers Elrich, Floreen,  
3 Praisner, Berliner, Andrews, and Leventhal. Those opposed? Those abstaining?  
4 Councilmember Knapp -- Vice President Knapp -- and Councilmember Ervin. Okay. We  
5 now to move to the issue of the Enterprise Zone. And absent any -- well, we do need to  
6 take a proactive action because this is a new facility -- new policy. So we need a motion  
7 one way or the other on the issue of Enterprise Zones. Councilmember Leventhal?

8  
9 Councilmember Leventhal,  
10 Well, yeah, I would move that we continue to exempt residential development and  
11 Enterprise Zones from the School Facility Payment.

12  
13 Council President Praisner,  
14 Is there a second? It's been moved and seconded that Enterprise Zone developments  
15 be exempt from the payment for the School Facilities Payment, which is the policy  
16 currently. Councilmember Andrews.

17  
18 Councilmember Andrews,  
19 I am not going to support the motion. I prefer the staff's recommendation, which is to  
20 require it from market rate housing to exempt affordable housing in the Enterprise  
21 Zones, because I'm concerned that while I can justify it in terms of the competing policy  
22 goals we have in order to encourage affordable housing -- especially in Enterprise Zone  
23 areas which are near metros in the case of our Enterprise Zones -- I would be  
24 concerned about the impact on schools, some of which are overly crowded, that could  
25 be affected by not requiring a School Facilities Payment from market rate housing. So I  
26 would support that. If the motion fails, I'll support and recommend the staff  
27 recommendation.

28  
29 Council President Praisner,  
30 Well, I think that there is already an Exemption for Affordable Housing. So if this motion  
31 fails, the Exemption for Affordable Housing would apply if we continued that policy.  
32 Correct?

33  
34 Glenn Orlin,  
35 Correct.

36  
37 Councilmember Floreen,  
38 Does this apply to this test?

39  
40 Council President Praisner,  
41 Yes. It applies to all tests.

42  
43 Mike Faden,  
44 The School Facilities Payment is keyed to the Impact Tax. That's the way the law was  
45 written four years ago. So the exemptions for the Impact Tax apply. And we raised the



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1 question of whether it is appropriate to exempt a development only because it's in an  
2 Enterprise Zone.

3  
4 Council President Praisner,  
5 Councilmember Leventhal, you wanted to comment?

6  
7 Councilmember Leventhal,  
8 Well, just as a matter of parliamentary procedure, I'm not even clear on why a motion is  
9 needed here since if the Council were silent on this point, it would have the effect of my  
10 motion anyway. But since the Council President asked –

11  
12 Council President Praisner,  
13 No. No. Well –

14  
15 Councilmember Leventhal,  
16 It is key to the Impact Tax. The Impact Tax is not imposed in Enterprise Zones.

17  
18 Council President Praisner,  
19 No, only –

20  
21 Councilmember Leventhal,  
22 That's what staff just said

23  
24 Council President Praisner,  
25 – only for affordable housing.

26  
27 Councilmember Leventhal,  
28 No, I'm sorry. That's not what I heard, and that's not what the packet says.

29  
30 Council President Praisner,  
31 I'm sorry. Okay, counsel – all right.

32  
33  
34  
35 Councilmember Leventhal,  
36 If we did nothing – if we did not speak here – so the status quo is my motion.

37  
38 Council President Praisner,  
39 The only problem is, George, that this is a new policy; and so the question of including it  
40 –

41  
42 Councilmember Leventhal,  
43 I've made the motion. I'm just saying -- I just want to be clear as we're weighing whether  
44 or not to -- how to vote, all we are doing is restating the status quo in law. The status  
45 quo in law, as described by staff, is that the facilities payment charge only kicks in



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1 where there is an Impact Tax; and under current law in the Enterprise Zone, there is not  
2 an Impact Tax. So all we are doing in voting for this motion is restating the status quo. I  
3 continue to question whether a motion was necessary; but the Council President asked  
4 for one, and I made it.

5  
6 Council President Praisner,  
7 Well, I was suggesting a motion is necessary because of the Growth Policy issues – not  
8 for legislative. Well, it's before the Council now.

9  
10 Councilmember Leventhal,  
11 So I'm just clarifying that it is a restatement of the status quo. Okay. Mr. Orlin wanted to  
12 comment.

13  
14 Glenn Orlin,  
15 No. No.

16  
17 Council President Praisner,  
18 No? Okay. There are two lights. Councilmember Floreen?

19  
20 Councilmember Floreen  
21 Thank you. Well on this point, it does warrant some clarification because the issue of  
22 extending the Enterprise Zone exemption is an issue in the other packet that we haven't  
23 gotten to. So at this point in time, I guess those zones have expired; correct? And some  
24 action was -- I'll just say, just to be technical, some action was required and considered  
25 in the MFP Committee. I wasn't there, but I did read the packet. So there is –

26  
27 Councilmember Leventhal,  
28 It has been duly made and seconded, and it is before the Council now.

29  
30 Council President Praisner,  
31 I understand that; but Councilmember Floreen's asked a question. Mr. Faden, do you  
32 want to comment?

33  
34  
35  
36 Mike Faden,  
37 Yes, those are actually separate issues. Whether the Enterprise Zone includes an  
38 expired Enterprise Zone – whatever you decide on that, we believe would apply across  
39 the Board. And then this is a related but somewhat separate question as to whether this  
40 whole facilities payment should apply there.

41  
42 Councilmember Floreen,  
43 Okay. So I do think it is appropriate to take a position on it at this point. We can put it to  
44 the side until we address the MFP Committee recommendations. Fine. It's a procedural  
45 issue. But I think until we address that, currently Enterprise Zone activity is not exempt



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1 unless we determine that it actually is. But, fine. I'm at the point where I'm trying to  
2 reconcile Council recommendations to County policy. One policy has -- at least used to  
3 be -- that we wanted to facilitate and encourage development around Metro stations.  
4 Another related one has to do with our support and advancement of affordable housing.  
5 Based on my quick trying to follow the issues here, it appears to me that under what the  
6 Council's already preliminarily determined -- for the School's Test, at least -- the Einstein  
7 cluster will be a moratorium. That affects everything in Wheaton to the west side of  
8 Georgia Avenue, down to Silver Spring, down -- and the west side of Colesville Road, I  
9 think. I don't know how -- as well as puts everything in Wheaton in the Kennedy cluster  
10 in moratorium. That has an impact on the transit stations in Silver Spring and Wheaton-  
11 Glenmont. And then on the 105% number, as I best I can tell, it imposes this additional  
12 school facilities fee in B.C.C. of the Bethesda CBD. Is that correct?

13  
14 Bruce Crispell,  
15 Well, if you're talking about the Silver Spring Transit Station, that's in the Blair cluster --  
16 as I understand it -- not the Einstein cluster.

17  
18 Councilmember Floreen,  
19 Well, the CBD at least is -- it's part of Einstein.

20  
21 Bruce Crispell,  
22 There's a part of Woodland which is Einstein --

23  
24 Council President Praisner  
25 Just a very small part of it.

26  
27 Bruce Crispell,  
28 Yeah -- a very small part. Most of it's East Silver Spring.

29  
30 Councilmember Floreen,  
31 I took the liberty of printing your map; maybe it's wrong. But online, it says everything  
32 west of Colesville is in Einstein, down to -- I'm not sure -- below the railroad tracks. I  
33 don't know. I didn't write this map. The School System website provided it to me.

34  
35  
36  
37 Bruce Crispell,  
38 But that doesn't take you down into the lowest part of Silver Spring where the CBD is.

39  
40 Glenn Orlin,  
41 It does.

42  
43 Councilmember Floreen,  
44 I think it does.



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1 Glenn Orlin,  
2 It brings them to the northern part of the CBD.

3  
4 Councilmember Floreen,  
5 It goes down, I think, to Sixteenth Street. It would be helpful to have some clarification. If  
6 this is wrong, good to know; but I would like to understand that. Because that has some  
7 significant implications on – for things we might or might not wish to see achieved. So I  
8 would like to get a geographic -- and I'd asked for this last time, and you did provide it  
9 on the schools to a certain degree -- understand the geographic implications of the  
10 current Einstein decision. But I would also like to understand what this test would mean  
11 for one of the County's priorities, I thought, which was the redevelopment of Lot 31 in  
12 Bethesda. Because currently this analysis would add -- depending upon how you do the  
13 numbers -- some significant additional costs to that project. And Ms. Schwartz-Jones is  
14 here, I think, to speak a little bit about this. Could you talk to us about that issue?

15  
16 Diane Schwartz-Jones,  
17 I will, and I think this issue sort of crosses boundaries too -- whether it's workforce  
18 housing, whether it's affordable housing. The Lot 31 project is 30% workforce/affordable  
19 housing, plus there's a sizable developer payment towards helping achieve those goals  
20 as well. And what happens with these projects is they're very, very costly to develop.  
21 Any of these projects on PLD land -- well, actually, let me back up. What happens with  
22 the PLD land is we use the land, in some instances, to leverage the cost of a parking  
23 facility; and then we have a project above it that furthers some of our objectives -- such  
24 as affordable housing, workforce housing. The Lot 31 required that there be 30%  
25 workforce/affordable housing. We have that. There are extraordinary costs that are  
26 associated with doing this type of a project. We have to put the parking below grade in  
27 order to do it, which is very, very costly. And then the developer has extraordinary costs  
28 because what the developer is doing in this type of a situation is building a structure  
29 that's going to have it's core facilities -- every, you know, it's elevators, it's support -- it's  
30 going to have to go all the way down further than it would, and there's a premium on air  
31 rights development. On top of that, because of the way our design criteria are set up for  
32 our public parking facilities, the private improvements that go above them require that  
33 there be a transfer beam constructed; and those are very, very expensive. And we have  
34 been requiring that those -- I mean they're in excess of a million dollars. They can be  
35 between one to two million dollars, and we have been requiring the developers to pick  
36 up those costs. So now when you layer another million dollars plus of costs on top of it, I  
37 think that what the County Executive is concerned about is that some of these projects  
38 are just going to be off the table. And we can't use some of our PLD lots any longer to  
39 facilitate the types of leveraging of public assets to get the public parking and the  
40 housing policies that we're trying to further.

41  
42 Council President Praisner,  
43 Okay. The question in front of us is the motion on the Enterprise Zone, whether to  
44 continue the exemption for residential development in the Enterprise Zone. That is the  
45 motion in front of us.



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1  
2 Councilmember Floreen,  
3 Well, okay. I –  
4  
5 Councilmember Leventhal,  
6 Madame President –  
7  
8 Council President Praisner,  
9 I was waiting because she has the chair.  
10  
11 Councilmember Floreen,  
12 We'll just – I will return then to the affordable housing issue after this vote.  
13  
14 Councilmember Leventhal,  
15 Right. Get back to that. Right.  
16  
17 Council President Praisner,  
18 Okay. Councilmember Leventhal.  
19  
20 Councilmember Leventhal,  
21 I'm prepared to vote now on the Enterprise Zone issue –  
22  
23 Council President Praisner,  
24 Well, so am I; but your light was on.  
25  
26 Councilmember Leventhal,  
27 And then I was going to suggest that we then take up the issue of affordable housing  
28 which would be a –  
29  
30 Council President Praisner,  
31 Well, we're going to go through the other items; and we'll get to the affordable housing  
32 items before we –  
33  
34 Councilmember Leventhal,  
35 Before we get to local area transportation review.  
36  
37  
38  
39 Council President Praisner,  
40 Right.  
41  
42 Councilmember Leventhal,  
43 Even though it's not itemized here.  
44  
45 Council President Praisner,





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1 Yes.

2  
3 Councilmember Leventhal,  
4 Fine with me.

5  
6 Council President Praisner,  
7 Exactly. Okay. The motion in front of us is to continue to exempt residential  
8 development in Enterprise Zones from the School Facility Payment. All in favor of the  
9 motion? Councilmembers Leventhal, Floreen, and Praisner. I'm sorry. Valerie, are you  
10 voting? I'm sorry -- and Councilmember Ervin. Those opposed? Councilmembers Elrich  
11 and Andrews, and the rest of the Council is not present. Okay? We'll move on then to  
12 the next item and probably, hopefully, have the other Councilmembers weigh in.  
13 Councilmember Berliner indicated to me that he'd like to abstain at this point until he  
14 sees some of the other issues come together. The next issue is the use of School  
15 Facility Payments being -- and where they can be used. The Committee recommends  
16 that the School Facilities Payment be used to add capacity in the cluster and at the  
17 grade level. The current -- school level. Well, yes, you're right. School level -- not grade  
18 level. Absolutely. Yes. We need seventh grade seats more than anything, I think. The  
19 alternatives, obviously, which the Council may consider, would be the recommendation  
20 of Councilmember Floreen and the Board of Education that it can be used anywhere in  
21 the County, in any cluster, at any level; or one can continue the current law which allows  
22 the payment to be used for capacity in that cluster, but at any school level in that  
23 cluster. Councilmember Leventhal?

24  
25 Councilmember Leventhal,  
26 Okay. Mr. Knapp raised this issue; but I expressed sympathy for it, and so I'll carry the  
27 flag here since he's not here. So let me ask Mr. Crispell, "How easy is this really to  
28 match one dollar to one school that needs capacity?" Is this an exercise in -- huh? Hey,  
29 Mike.

30  
31 Council President Praisner,  
32 He's sliding into home plate.

33  
34 Councilmember Leventhal,  
35 Well, I was carrying the flag for you on this question. I mean, how real is this? I just think  
36 we have such an unbelievable confidence in the ability of government to get it right  
37 here. And I think we're embarking upon, you know, sort of a pointless exercise that's  
38 going to chew up your time and the Planning Board's time. So I mean, yes, of course if  
39 there's -- no one would argue in principle that if the need for capacity exists in a specific  
40 location that we ought to add capacity at that location. Obviously that principle does  
41 make sense; but in practice, how practical is it?

42  
43 Bruce Crispell,  
44 I think it's more just an accounting problem -- just having small pots of money in several  
45 locations.



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1  
2 Councilmember Leventhal,  
3 It's not easy to administer.

4  
5 Bruce Crispell,  
6 It's more - I would say it's more difficult to administer –

7  
8 Councilmember Leventhal,  
9 It's undesirable from your perspective.

10  
11 Bruce Crispell,  
12 -- than a countywide fund would be.

13  
14 Councilmember Leventhal,  
15 Yes?

16  
17 Bruce Crispell,  
18 You hate to put words in my mouth, but –

19  
20 Councilmember Leventhal,  
21 Undesirable, yes? Lead us out of the wilderness here.

22  
23 Bruce Crispell,  
24 Right. And the School Board did not favor it. They favored giving us the flexibility. And  
25 we did make the point, sometimes the solution to a cluster's problem is actually not in  
26 the cluster. It's a school that might be next door. But I think you were working on a  
27 provision that would say it's okay to be next door, as long as you're taking care of that  
28 cluster. But it just is one more thing that complicates things, and I think –

29  
30 Councilmember Leventhal,  
31 Understanding that -- and we take it on faith that you mean it when you say that MCPS  
32 is always adjusting capacity, always looking at where capacity is needed. So it's not as  
33 though we're just throwing money into a vacuum here; the School Board is consistently  
34 monitoring where additional capacity is needed. So one would assume that it comes out  
35 in the wash -- that where dollars are added, dollars will be spent where they're needed.

36  
37 Bruce Crispell,  
38 I guess so, but --

39  
40  
41 Council President Praisner,  
42 Well, I guess I would -- as a former School Board member -- would respectfully  
43 disagree. It isn't always going on. It happens through the Capital Budget process and  
44 goes through a fairly rigorous review of what solutions might be possible, looking at  
45 individual schools. And it also is looked at in the context of long-term projections as well



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1 current. And I think the issue that Dr. Hanson raises is the relationship issue that  
2 caused the Planning Board, I think, to look at this at least from a cluster perspective --  
3 or have some concern about using it countywide.

4  
5 Councilmember Leventhal,  
6 Does Dr. Hanson not believe the School Board when it says that it is -- always monitors  
7 where capacity is needed and seeks to add capacity where it's needed?

8  
9 Royce Hanson,  
10 I would never not believe the School Board.

11  
12 Councilmember Leventhal,  
13 Okay. So, Mike, do you want to make a motion and I'll second it? And we'll just see  
14 what the -- I mean do you want to see what the will of the body is?

15  
16 Council President Praisner,  
17 The Committee's recommendation --

18  
19 Councilmember Leventhal,  
20 Right.

21  
22 Council President Praisner,  
23 -- which is before the Council would be to use it to add capacity in the cluster that is  
24 affected at the school level that is needed. If there are alternate motions, then they are  
25 in order -- Councilmember Leventhal or Vice President Knapp.

26  
27 Council Vice President Knapp,  
28 No. Thank you, Madame President. I actually did have a question at one point. I was  
29 going to follow up with with Mr. Crispell. Oh, too many pieces rolling around in here.  
30 Anyway --

31  
32 Councilmember Leventhal,  
33 It's time to make a motion.

34  
35 Council Vice President Knapp,  
36 It is. I would at least stay with our current law. Does the Board of Education want to  
37 change that? Are they okay with current law?

38  
39  
40  
41  
42 Bruce Crispell,  
43 Yeah. They were in favor of having the School Facility Payment go into a general fund --  
44 not cluster.



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1 Councilmember Leventhal,  
2 Second the motion.

3  
4 Council Vice President Knapp,  
5 Add permanent capacity in the needed cluster. Current law.

6  
7 Council President Praisner,  
8 Okay. The motion before us, made by Vice President Knapp and seconded by  
9 Councilmember Leventhal, would continue the current practice of requiring that the  
10 payment be used to add permanent capacity in the needed cluster, but at any grade  
11 level. And that is the motion in front of us. Councilmember Elrich.

12  
13 Councilmember Elrich,  
14 I was harkening back to the discussion we had about how flexible you are. And I was  
15 thinking about comments actually that George had made during the springtime when we  
16 were talking about the school budget and other issues about how often there was a  
17 willingness to do boundary changes. And so I'm trying to square how schools get to  
18 some of the very obscene levels of overcrowding that they're at if the Board is  
19 constantly looking at how to be flexible with boundary changes or, you know, address  
20 these issues -- which makes me worry a little bit about not requiring some kind of  
21 targeting of the spending toward the clusters. Now I just took from our conversation that  
22 this could be done not necessarily within the cluster -- that you could make a decision in  
23 a neighboring cluster that would allow some adjustments. And I'm comfortable with that,  
24 if that's what really happens. But my concern is that that be the outcome that actually  
25 really happens. And I thought we left the meeting -- I was comfortable with your answer;  
26 but I'm less concerned about being specified in the cluster as long as that's the case.

27  
28 Bruce Crispell,  
29 Well, we have a good example of that this year in the CIP. We're recommending a new  
30 middle school open, and it's actually in the Damascus cluster -- physically probably the  
31 site will be. But it's designed to relieve Rocky Hill, which is in the Clarksburg cluster. So  
32 that's a good example --

33  
34 Council President Praisner,  
35 And will there be a boundary change associated with that?

36  
37 Bruce Crispell,  
38 There'll be boundary changes that go along.

39  
40  
41  
42  
43 Council President Praisner,  
44 There will be boundary changes. Okay. All right. Further lights on this issue? Marc, I'm  
45 sorry.



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Councilmember Elrich,  
No. No.

Council President Praisner,  
Are you done? Okay. Councilmember Floreen.

Councilmember Floreen,  
Well, I would just say that Bruce's response is one the Board of Education recommended -- and I supported what they said -- to give them the flexibility to address the needs appropriately. I mean I'll support this motion; it's better than, I think, than the alternative. But I don't think it gets our students where they need to be, which is a place to sit.

Council President Praisner,  
Okay. Councilmember Leventhal, back to you.

Councilmember Leventhal,  
Well, unlike Chairman Hanson, I do sometimes question what the Board of Education says. [Laughter] And I do appreciate Mr. Elrich's point that obviously if the School Board were perfectly addressing every overcrowded classroom, we wouldn't have any overcrowded classrooms -- and obviously we do have some. Having said all that, I just think the more complexity you add here, the more staff you're going to have to add -- the more you're going to bog the whole thing down, and I'm not sure what you're really addressing since, again, as I said earlier, \$15,401 for a single-family attached home in the Northwood cluster doesn't really buy you anything. So it's all sort of academic to say we're going to spend "that" \$15,401 in "that" school just seems like a pointless exercise that's going to tie up staff to no real outcome.

Council President Praisner,  
Okay. Vice President Knapp.

Council Vice President Knapp,  
Finally, the only point I would raise in the end -- and actually it's only tangentially involved with this motion -- is I think if we've seen nothing over the last couple of years, it's the need for us not to try to put things on autopilot and assume a process is going to work. But it's the need for us to continue to come back, as the body with oversight, to work with all of our other departments and agencies to make sure we're asking these questions. And so we're obviously going to do this every two years. But I think it's important for us to see if we're putting those dollars in some place, how are those dollars being allocated and force that back to us, as the policy makers, to see how that's actually working. Because to just say, "Oh well, we've got this accounting mechanism put in this place and this is going to work and these dollars are going to go here" -- I haven't seen a lot of evidence of that in the last three years, that those processes in



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1 autopilot work very well. And so I think it's important for us to have something that kind  
2 of forces us to go back and look to how those dollars are truly being spent.

3  
4 Council President Praisner,

5 Well, I guess I would answer that we haven't had a School Facilities Payment; so that's  
6 why you haven't seen any tracking.

7  
8 Council Vice President Knapp,

9 No, not necessarily in the School Facilities Payment, but more broadly as it relates to  
10 processes within County Government that if everyone just did their thing, they all  
11 worked. We've found a lot of instances where that hasn't been the case.

12  
13 Council President Praisner,

14 Okay, I understand. I just wasn't sure, based on the motion in front of us, the  
15 relationship on that issue since we haven't had any payments. Okay, the motion in front  
16 of us would continue the existing policy to use the payment to add permanent capacity  
17 in the needed cluster. That definition includes -- I think has been interpreted in the past  
18 as meaning the capacity in the needed cluster may mean spending the money at an  
19 adjoining cluster in order to provide that capacity in the needed cluster. Okay, that  
20 motion is in front of us. All in favor of the motion, please indicate by raising your hand.  
21 [Show of hands] Councilmembers Ervin, Elrich, Floreen, Praisner, Knapp, and  
22 Leventhal. Those opposed? Councilmembers Andrews and Berliner. Okay. That motion  
23 passes. We're now at the de minimis development issue. And the Committee  
24 recommendation is to exempt developments of three or fewer units. This was  
25 recommended by staff. There is no position from the Board of Education or the Planning  
26 Board except that to the extent there has been no de minimis, one could argue that the  
27 Planning Board is recommending no de minimis continue. Councilmember Floreen is  
28 recommending exempting ten or fewer units from the test. Lights. Councilmember  
29 Floreen.

30  
31 Councilmember Floreen,

32 Yeah. Karl, can you just remind us the number of children that you estimate to be  
33 generated by each unit? As I recall, the three units added up to one elementary student.

34  
35 Karl Moritz,

36 Right. Yes.

37  
38 Councilmember Floreen,

39 And with the ten units, added up to like more than one student.

40  
41 Karl Moritz,

42 Right. Total students generated by one unit -- single-family detached -- it's about .6. So  
43 three times .6 is --

44  
45 Councilmember Floreen,



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1 .6 at different levels.  
2  
3 Karl Moritz,  
4 3.6 students. Right.  
5  
6 Councilmember Floreen,  
7 So – pardon me?  
8  
9 Karl Moritz,  
10 1. – yeah -- .6 times 3 – 3.2 students. There you go.  
11  
12 Councilmember Floreen,  
13 3.2.  
14  
15 Karl Moritz,  
16 3.2 students will be generated by three units.  
17  
18 Councilmember Floreen,  
19 And that's with any –  
20  
21 Councilmember Leventhal,  
22 Math was never my best subject, but I think that's 1.8.  
23  
24 Royce Hanson,  
25 Under 2 – just under 2.  
26  
27 Karl Moritz,  
28 Okay. Well, good. I'm glad I brought you here today.  
29  
30 Councilmember Floreen,  
31 You're our math guy. So it's –  
32  
33 Karl Moritz,  
34 I never do anything in my head.  
35  
36 Council President Praisner,  
37 Hand that man a calculator.  
38  
39 Councilmember Floreen,  
40 Three units generate 1.8 children.  
41  
42 Karl Moritz,  
43 That's right. That's right.  
44  
45



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1 Councilmember Floreen,  
2 So I guess I went with ten because I thought that would get us at least more than one  
3 child to start worrying about. It is a nitpicking issue to be sure. But if we're going to allow  
4 something to occur, it seems to me we should pick something that generates a number  
5 that involves more than one and a half children.

6  
7 Council President Praisner,  
8 Okay. Councilmember Elrich?

9  
10 Councilmember Elrich,  
11 1.8 children is better than one and a half?

12  
13 Royce Hanson,  
14 Should we round them down or up?

15  
16 Council President Praisner,  
17 I think you round them up.

18  
19 Councilmember Elrich,  
20 My question is for Bruce. Is this the formula that we used in Clarksburg? And how off  
21 are we in Clarksburg? In other words, how many more students were generated than  
22 were projected? Because we do have a tad of an overcrowding problem there.

23  
24 Bruce Crispell,  
25 Well, the figure Karl quoted are countywide averages. We do have subareas of the  
26 Upcounty -- and they're higher up there -- that we use when I do forecasting. I think the  
27 yield is about right -- that those factors are about right. When a school comes in over  
28 capacity, it's more to do with more occupancies occurred in a year or over a period of  
29 time than were projected. It's not that the generation factor was necessarily off; it's  
30 usually more the pace of development was quicker. That is particularly true in  
31 Matsunaga when South Germantown was developing so quickly. So that's where the  
32 forecast error comes in more than anywhere.

33  
34 Councilmember Elrich,  
35 Well, when -- if this is just a matter of pace, when was the plan to provide the other  
36 schools that Clarksburg would need -- assuming that the demand was going to be there  
37 at a later time?

38  
39 Bruce Crispell,  
40 Well, I'm not sure I understand your question.

41  
42 Councilmember Elrich,  
43 Well, if they happened quicker than you thought -- and so you thought you had room.





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1  
2 Bruce Crispell,  
3 Right.

4  
5 Councilmember Elrich,  
6 But eventually all the things were going to get built and occupied.

7  
8 Bruce Crispell,  
9 Right.

10  
11 Councilmember Elrich,  
12 So where's the facility for Clarksburg maybe a year or two later when all the things are  
13 built and occupied on your schedule rather than on your projected scales or rather than  
14 what really happened? How would you have dealt with that?

15  
16 Bruce Crispell,  
17 Well, we re-evaluate what we put in the six-year period. Of course we knew -- every six-  
18 year CIP that comes out, there's more behind it that's going to come as the community  
19 develops out. What happened this year is several schools came in over capacity, and  
20 therefore we've put some new projects in. We've put an addition to Clarksburg High  
21 School in, Clarksburg Damascus Middle School, and we put another elementary school  
22 in for facility planning. So we've adjusted based on the latest information in the new  
23 forecast and put a lot more capacity in the CIP in the six-year period.

24  
25 Councilmember Elrich,  
26 You put that in this year?

27  
28 Bruce Crispell,  
29 That's in the new CIP recommendation.

30  
31 Councilmember Elrich,  
32 When did you know -- when did people know they were going to have a problem there?  
33 This year? Last year?

34  
35 Bruce Crispell,  
36 Well, I knew the forecast was too low when the enrollment came in this fall; and then I  
37 developed new projections off of that actual base. And, you know, it's -- who can tell  
38 when Clarksburg is going to build out, you know?

39  
40 Council President Praisner,  
41 Good question.

42  
43 Bruce Crispell,  
44 And how many thousands of units a year or whatever? So it's a forecast, and there's a  
45 lot of potential for error there.



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Councilmember Elrich,  
Okay.

Council President Praisner,  
Okay. The motion in front of us -- I'm sorry -- Councilmember Floreen.

Councilmember Floreen,  
Yes, I wanted to make a substitute motion of exempting ten or fewer units from the test.  
This would at least round up the numbers so a few projects might be able to proceed.

Council President Praisner,  
Is there a second?

Councilmember Ervin,  
What was the motion, please?

Council President Praisner,  
The motion was the Committee's recommendation of three or fewer units.  
Councilmember Floreen is moving ten or fewer units.

Unidentified,  
Second.

Council President Praisner,  
Okay, it's been moved and seconded that the exemption be for ten or fewer units. I see  
no lights; so all in favor of the substitute motion of ten or fewer units indicate, please.  
[Show of hands] Councilmember Floreen. Councilmember Ervin voting for the ten or  
fewer? No. Okay. Those opposed? Councilmembers Leventhal, Andrews, Berliner,  
Knapp -- are you voting? -- Knapp, Praisner, and Elrich. Opposed?

Councilmember Leventhal,  
Yes.

Council President Praisner,  
Yes, and Councilmember Ervin. So the motion fails. We're back to the original motion.  
All in favor of the original motion?

Council Vice President Knapp,  
We had a prior vote, Madame Chair.

Council President Praisner,  
I know, but I just want to make sure folks are comfortable. All in favor of the three or  
fewer units? [Show of hands] That is unanimous. Okay. That concludes the items that



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1 were part of the Committee's review. This is now an opportunity for any other motions  
2 related to schools. Councilmember Leventhal?

3  
4 Councilmember Leventhal,

5 I will actually yield to Ms. Floreen. I was expecting that she would want to wander into a  
6 discussion of affordable housing. And I recall that at our last worksession I had asked of  
7 staff -- and I think Ms. Floreen and others had asked of staff -- that we prepare a menu  
8 of options in response both to the County Executive and to the Housing Opportunities  
9 Commission's recommendations that projects with a substantial number of affordable  
10 units be exempt from these various taxes and charges and fees. So I -- knowing of Ms.  
11 Floreen's passionate interest and advocacy on this subject -- I will yield to her and be  
12 prepared to second her motion if I like it. [Laughter]

13  
14 Councilmember Berliner,  
15 But not vote for it.

16  
17 Council President Praisner,

18 Actually, Vice President Knapp was next; so I'll call on him and then Councilmember  
19 Floreen.

20  
21 Council Vice President Knapp,

22 I actually just -- now that we've kind of worked our way through all of the education  
23 elements, I actually -- the point that Mr. Elrich just raised is a good one. So we've just  
24 made a number of changes to our Growth Policy. And you just cited two examples, Mr.  
25 Crispell, where we had -- forecast didn't necessarily match up with activities on the  
26 ground. There were other -- additional schools programmed, but the timing of those  
27 schools relative to when the development occurred one would say was off by a couple  
28 of years. So given the changes that we've gone through -- which are to try and  
29 presumably modify that so we don't get to that point -- do you have a sense of if these  
30 changes would help ensure that what we've seen either in Clarksburg with Little Bennett  
31 or with Matsunaga and the timing of that, that this would help ameliorate those types of  
32 issues in the future?

33  
34 Bruce Crispell,

35 In general, I think it would in a place like Clarksburg where most of the growth  
36 enrollment increase there is new development. But I would say in most of the rest of the  
37 County, where there is infill and projects that are much more outweighed by existing  
38 communities, that I'm not sure it's going to have that much of an impact.

39  
40 Council Vice President Knapp,

41 Okay. Well, that's very helpful. Thank you.

42  
43 Council President Praisner,  
44 Councilmember Floreen.



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1 Councilmember Floreen,

2 Thank you, Madame President. As I said earlier, I've been waiting for the time to have a  
3 conversation about affordable housing. I'm really, really concerned. The tighter we draw  
4 these tests, the less likely it is that we will see it produce. Now, it's certainly true it's not  
5 a vast amount. But it is an effort, and there are a lot -- we're spending a lot of money in  
6 the Housing Initiative Fund to get some of these things underway. If we are going to be  
7 adding additional tests and additional burdens to those projects, they're just not going to  
8 happen. And we all know that the numbers that we're dealing with are well-intentioned,  
9 but they are hypothetical. They are a guesstimate. Numbers are likely to be higher in  
10 the Upcounty than they are in transit station areas. It all depends, and we really can't  
11 entirely predict how those numbers are going to apply. The County Executive has raised  
12 this issue in the context of the Impact Taxes per se -- and we'll get to that, I guess,  
13 when we get to that. But based on what this Council has preliminarily decided to do  
14 already, we have precluded -- at least at this moment in time -- housing development  
15 that includes significant affordable housing units at the Glenmont Metro Station -- at  
16 least to the western side of Georgia Avenue in Wheaton -- through a portion at least of  
17 Silver Spring. That remains to be seen based on a verification of the boundaries. But it  
18 looks to me like everything on the west side of Colesville because of the moratorium  
19 number. We are also adding significant costs in Bethesda. And I think it will have  
20 remarkable implications -- if not death-toll-type implications for initiatives like Lot 31 --  
21 which this County has put a lot of time and effort into. What I would like to propose is  
22 that we exempt the entire project -- that includes 30% or more affordable units. And by  
23 that I would mean MPDUs and workforce housing from the school's tests. That's my first  
24 motion.

25  
26 Council President Praisner,

27 Is there a second? Is that the one, Councilmember Leventhal?

28  
29 Councilmember Leventhal,  
30 Yeah.

31  
32 Council President Praisner,

33 All right. The motion has been made to exempt any development with 30% or more  
34 MPDUs and workforce housing from the Schools Facilities Test -- the entire test -- the  
35 entire Growth Policy Test -- is what the motion is.

36  
37 Councilmember Floreen,  
38 That's correct.

39  
40 Council President Praisner,  
41 Okay. There are -- pardon me?

42  
43 Council Vice President Knapp,  
44 Similar to Enterprise Zones.



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1 Councilmember Floreen,  
2 Exactly like Enterprise Zones. Well, it could go a little further depending –  
3

4 Council President Praisner,  
5 The Enterprise Zone relates to certain tests. This relates to even looking at any  
6 development in that context. So I have some lights. I'd like to call on the  
7 Councilmembers. Councilmember Leventhal, you're next.  
8

9 Councilmember Leventhal,  
10 Thank you very much, Madame President. Let me just put this out there – and I said it  
11 at our last meeting. First of all, let me ask the question because I have a memo dated  
12 October 22nd from the County Executive; and he doesn't address this issue of an  
13 exemption for affordable housing.  
14

15 Councilmember Floreen,  
16 No, he didn't.  
17

18 Councilmember Leventhal,  
19 But we had a memo from staff that said that he had a view on this.  
20

21 Diane Schwartz-Jones,  
22 Actually, his original memo -- or actually I think it was his testimony. That's what I was  
23 just looking at. His original testimony suggested an exemption for projects with  
24 affordable housing – 30% or greater affordable housing -- and that was as it related to  
25 the charges. But I think anything that is going to further the ability to achieve these  
26 workforce affordable housing projects that we're working on, we want to pursue.  
27

28 Councilmember Leventhal,  
29 Okay.  
30

31 Diane Schwartz-Jones,  
32 In downtown Silver Spring, that area is part of an Enterprise Zone; so I think that we're  
33 okay in that. But Bethesda, we -- that would not be okay. We would not –  
34

35 Councilmember Leventhal,  
36 Lot 31 is not an Enterprise Zone.  
37

38 Councilmember Floreen,  
39 I don't know.  
40

41 Councilmember Leventhal,  
42 Okay. If I could, let me just clarify. Look, I want to –  
43

44 Council President Praisner,  
45



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1 Let me ask a clarification because the question's been asked of me as to what that  
2 motion – what the motion means. And the motion is more than just payment. The  
3 motion – well, you're shaking your head, Glenn, but her motion exempted them from the  
4 policy.

5  
6 Glenn Orlin,  
7 This motion isn't about the payment; you haven't gotten there yet.

8  
9 Council President Praisner,  
10 No, that's right.

11  
12 Glenn Orlin,  
13 This is a motion which says -- exempts you from – both the school and the  
14 transportation or just school tax?

15  
16 Councilmember Floreen,  
17 Just the school tax; we're on schools. Yeah, that's later.

18  
19 Council President Praisner,  
20 That means that you don't evaluate the project at all from a school's perspective.

21  
22 Glenn Orlin,  
23 Correct. Right.

24  
25 Council President Praisner,  
26 Right.

27  
28 Glenn Orlin,  
29 Presumably it would get counted in the background once it is approved.

30  
31 Councilmember Floreen,  
32 Sure.

33  
34 Glenn Orlin,  
35 But itself would be approved.

36  
37 Council President Praisner,  
38 Right.

39  
40 Councilmember Floreen,  
41 Sure.

42  
43 Councilmember Leventhal,  
44 I understand. May I–  
45



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1 Council President Praisner,  
2 Councilmember Leventhal. Yes, you may.

3  
4 Councilmember Leventhal,  
5 I suspect -- and Ms. Floreen and I have talked about this, and Ms. Ervin and I also --  
6 we're going to keep trying on this Affordable Housing issue until we get something that a  
7 majority of the Council will back. So I'm prepared to second pretty much any motion  
8 here because I am very concerned -- any motion that I like -- because I'm very  
9 concerned, as a number of us said at the outset, of the overall impact of this whole  
10 thing. We're building huge costs into new housing stock -- enormous new costs. We  
11 don't know exactly what the impact will be for Affordable Housing; but, as I said at the  
12 beginning, it can't be good. So where we have a developer who is balancing the difficult  
13 economics of bringing on more than the law requires -- which is what we're talking about  
14 -- then it seems to me we ought to do what we can to encourage the bringing online of  
15 new units. I don't want to give a long speech on Affordable Housing; there'll be lots of  
16 opportunities to do that. However, let me just say in response to comments that have  
17 been made before, is it important that we preserve existing rental stock? You bet. Is it  
18 important that we address affordability of rents through a variety of mechanisms? You  
19 bet. But is it not also important that we bring new units online and allow new  
20 construction? You bet. We've got to do all these things to keep housing affordable. So I  
21 don't think the fact that we aren't bringing a lot of new units online argues for not bringing  
22 any new units online. We want to bring online as many new affordable units as we can.  
23 Having said that, based on the comments I'm hearing from my colleagues now with  
24 respect to exempting these projects entirely from a school facilities test or school facility  
25 measurement, I have seconded it. I will vote for it. If it doesn't have the support of the  
26 majority of the body, let's come back with something that will.

27  
28 Councilmember Floreen,  
29 Keep going.

30  
31 Councilmember Leventhal,  
32 Right. So I have some ideas about other approaches to this issue. The one thing I  
33 would say now, at the beginning of this discussion is, "Let us be consistent"; that is,  
34 whatever rule a majority of the Council arrives at, let's have that rule apply across the  
35 board to facilities payments, school impact fees, and transportation impact fees so that  
36 our hardworking people who have to regulate -- who have to implement this law -- and  
37 the industry and the public have a consistent set of rules to work on. So it's going to  
38 take us -- we may be on this issue for a little while, and we'll come back to it when we  
39 get to Transportation Impact Taxes.

40  
41 Council President Praisner,  
42 Councilmember Ervin.

43  
44 Councilmember Ervin,



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1 Thank you. I spoke to this issue this morning, and I will say again that we can't talk out  
2 of two sides of our mouth on these policy issues. And I believe, as Councilmember  
3 Leventhal and Councilmember Floreen just stated, we'll keep chipping away at this until  
4 we get someplace. And I had several meetings over the last three weeks with housing  
5 advocates who clearly did not have a grasp – a good understanding -- of the annual  
6 Growth Policy and the implications for affordable housing units in the County. And the  
7 more they met with me and my staff, the more they began to understand the policy  
8 implications for building affordable units in this County. So I am going to support  
9 Councilmember Floreen's motion. And you know, I listened very carefully to my  
10 colleague, Mr. Elrich, earlier talk about how the County hasn't done enough. No, I don't  
11 think we've done enough. But I think we have to keep trying to do as much as we can,  
12 and to really begin to listen earnestly to the people that we normally don't see come  
13 before us in front of this dais to talk about the needs of a lot of people in our community  
14 who we don't hear from who expect us to do the right thing. So I appreciate the motion. I  
15 will vote in support of it.

16  
17 Council President Praisner,  
18 Councilmember Andrews.

19  
20 Councilmember Andrews,  
21 Thank you. I'm going to vote against the motion. I don't think this is a targeted approach.  
22 I think we should focus on affordable housing by directly supporting it – whether it's  
23 through the Housing Initiative Fund which we've increased by 1200% in the last eight  
24 years. It was two and a half million dollars in 1999; now it's thirty million. We added ten  
25 million to it this year; it's up 50%. We should focus on preserving units that are being  
26 converted to market rate housing. We should limit exceptions, in my view, in terms of  
27 new development to the units that are affordable rather than letting off the hook the 70%  
28 that aren't, which will contribute to the problems we already have with school  
29 overcrowding. And if we exempt all those units as well from any traffic payments,  
30 exempting them there too. I don't think that's the way to go. Affordable housing is an  
31 important need. We are addressing it in some specific ways. I don't think we should  
32 address it at the cost of worsening traffic or school overcrowding. I think those are  
33 actually problems that stand very much on their own. And I would submit that I think  
34 they are ones we can't afford to undermine as we address affordable housing.

35  
36 Council President Praisner,  
37 Councilmember Berliner.

38  
39 Councilmember Berliner,  
40 First, a clarification request. The existing law – the existing requirements with respect to  
41 “affordable and workforce housing” is what?

42  
43 Mike Faden,  
44 Regarding all the tests, school and transportation, there is no exemption for any kind of  
45 housing except that –





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1  
2 Councilmember Berliner,  
3 All right. I am asking a different question.

4  
5 Mike Faden,  
6 Okay.

7  
8 Councilmember Berliner,  
9 The question I am asking now is, "What is the obligation with respect to a developer  
10 today with respect to –

11  
12 Mike Faden,  
13 I see.

14  
15 Councilmember Berliner,  
16 -- offering affordable /workforce housing?"

17  
18 Mike Faden,  
19 Developers have to make 12.5% of their units -- MPDUs -- in almost all cases. They can  
20 go up to 15% MPDUs with -- and they get some density bonus and other things for  
21 doing that. Certain developers in certain Metro station area zones have to produce 10%  
22 workforce housing that hasn't actually happened yet.

23  
24 Councilmember Berliner,  
25 In addition to –

26  
27 Mike Faden,  
28 In addition to the MPDUs. There is no requirement for what's commonly called "low-  
29 income housing," which is below the MPDU level.

30  
31 Councilmember Berliner,  
32 All right. So as I appreciate it, there are a number of areas in the County today that  
33 would require a minimum of 22.5% combination of MPDUs and workforce housing?

34  
35 Mike Faden,  
36 Right. There's a relatively small number of places where that would apply. Much more  
37 common is the 12.5% MPDU rate.

38  
39 Councilmember Berliner,  
40 All right. And another clarification request. As I appreciated your motion, it was a  
41 combination of MPDUs and workforce housing. It was not 30% MPDU housing; is that  
42 correct?

43  
44 Councilmember Floreen,



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1 My view would be it would be 30% affordable housing, and that could be whatever the  
2 mix was.

3  
4 Councilmember Berliner,  
5 All right. So whatever the mix was, are you suggesting –

6  
7 Councilmember Floreen,  
8 Of the affordability. I mean there might be below the workforce housing level depending  
9 upon the arrangement. I'm not aware of many in that category. I would assume it would  
10 be workforce MPDUs and some additional because this is higher than the requirement -  
11 - 30%.

12  
13 Councilmember Berliner,  
14 And my question to the sponsor was whether or not -- with respect to that 30% --  
15 whether or not there was any minimum. You would keep, for example, the 12.5%. But is  
16 it your expectation or is it your motion that that 12.5% for MPDUs would go up to 30%,  
17 or are you suggesting that it would be a combination of MPDUs and workforce housing?

18  
19 Councilmember Floreen,  
20 I'm following the lead of the County Executive on this, who said, "Go with the 30%  
21 number." I don't think he delved into the –

22  
23 Councilmember Berliner,  
24 I was under the impression, quite frankly, the County Executive's number was related to  
25 MPDUs.

26  
27 Councilmember Leventhal,  
28 No.

29  
30 Councilmember Berliner,  
31 Now, I could be mistaken.

32  
33 Diane Schwartz-Jones,  
34 No. No. It was –

35  
36 Council President Praisner,  
37 Diane, your mic's not on. Diane, your mic's not on.

38  
39 Diane Schwartz-Jones,  
40 Sorry. He said 30% affordable housing; but he also, in a separate item, wanted  
41 workforce housing exempted as well. So –

42  
43 Councilmember Berliner,  
44 So I'm sorry – 30% affordable housing –  
45



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1 Diane Schwartz-Jones,  
2 Affordable housing -- but that was what the testimony was earlier on.

3  
4 Councilmember Berliner,  
5 And affordable housing typically, as I appreciate it, is distinct from workforce housing.  
6 So that's at least --

7  
8 Diane Schwartz-Jones,  
9 He also --

10  
11 Councilmember Berliner,  
12 So I thought it was MPDUs -- so I thought the County Executive's testimony in his formal  
13 presentation was 30% MPDU use and something additional.

14  
15 Diane Schwartz-Jones,  
16 The testimony that was submitted was 30% affordable, and there was a separate bullet  
17 item for workforce housing. And what I had stated earlier was that when we are putting  
18 the County land -- like the PLD land in -- and we require that it's a 30% -- it's a  
19 combined.

20  
21 Council President Praisner,  
22 But that's a separate issue, though.

23  
24 Diane Schwartz-Jones,  
25 Combined.

26  
27 Councilmember Floreen,  
28 Yeah.

29  
30 Council President Praisner,  
31 The motion relates to affordable housing, and that definition in the County law is  
32 MPDUs.

33  
34 Royce Hanson,  
35 Well, this is clearly a policy question for you; but I think you need to think about what  
36 you're doing.

37  
38 Councilmember Berliner,  
39 Why start now?

40  
41 Royce Hanson,  
42 Right now we require 12.5% MPDUs in a project. You can get 15% with a 22% bonus in  
43 density requiring 10% workforce housing. So you're at 25% affordable housing in your  
44 base. You're essentially taking 70% of your potential revenue from a project for a  
45 maximum return of 5% in affordable units. And your tax on the average unit is about 2.5,



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1 3%. So the profit margin on a market unit is such that you might get a few units this  
2 way; but you won't get very many, and you'll lose a lot of revenue.

3  
4 Councilmember Floreen,  
5 I'm going to respond to that –

6  
7 Councilmember Berliner,  
8 Can I reclaim my time?

9  
10 Councilmember Floreen,  
11 Yeah, by all means.

12  
13 Council President Praisner,  
14 You have the chair. No other lights should be on – just requests for speaking.

15  
16 Councilmember Berliner,  
17 I have a similar difficulty with the proposal for the reasons you've articulated, Dr.  
18 Hanson. But I guess my -- I also have a problem insofar as the scope of this  
19 amendment is not limited to payment. It includes whether or not these units and these  
20 children are counted for purposes of determining whether or not our schools are  
21 overcrowded. And I certainly want to support people in terms of being able to afford  
22 units. But they are still people, and they are still people that are going to be in our  
23 school system; and they are still going to be contributing to overcrowding of our school  
24 system. So to the extent to which we are -- through this motion -- pretending as though  
25 these people are not contributing to our school's overcrowding situation, I just find it to  
26 be terribly overbroad. There is a legitimate conversation to be had with respect to  
27 dollars. I find this aspect of the proposal to be not appropriate for consideration because  
28 it just – it doesn't make sense to me, with the greatest respect.

29  
30 Council President Praisner,  
31 Thank you. The next speaker is Councilmember Elrich.

32  
33 Councilmember Elrich,  
34 If Nancy is going to raise this with everything we do, I'm going to start raising residential  
35 rent control with everything we do; and we can have that debate every time. Most of the  
36 low-income folks in this County who are really struggling to make it are people who are  
37 renting. The number of people who qualify for MPDU program is small. There's an  
38 enormous number of people who are living in rental units and never have a chance to  
39 buy the MPDUs for whom we do nothing, and for whom this policy will have absolutely  
40 no impact whatsoever. And so we're ignoring the largest group of people, the ones who  
41 are struggling the most, to focus on this small segment to produce a few units that I  
42 think – as Royce has said correctly -- has a very, very marginal return. In addition, we're  
43 giving a density bonus which deals with the economics. That was the point of the  
44 density bonus. So the density bonus is dealing with the economic issue; and that leaves  
45 us, I think, with the adequate public facilities awareness. And it doesn't matter what you



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1 call the housing, it doesn't change it's impact – as Roger said – on adequate public  
2 facilities. So I can't support this. If we want to talk about exempting from fees for  
3 affordable units, that's fine; but to exempt it from the test and to pretend that adequacy  
4 no longer applies, I think that's a serious mistake. And I'm not willing to go there.

5  
6 Council President Praisner,  
7 Council Vice President Knapp.

8  
9 Council Vice President Knapp,  
10 Thank you, Madame President. Just a couple clarifications. It gets back to the definition  
11 of the pipeline that we talked about earlier. So we've got 25,000+ units in the pipeline.  
12 How would this proposal impact those 25,000+ units?

13  
14 Karl Moritz,  
15 It wouldn't impact the units that are already in the pipeline.

16  
17 Council Vice President Knapp,  
18 Okay, so all those units -- it wouldn't help or hurt anything. Wouldn't impact the amount  
19 of impact fees they would pay – impact taxes they would pay or not pay?

20  
21 Karl Moritz,  
22 I apologize because see what's on the table is the School Facilities Payment, I believe –

23  
24 Council Vice President Knapp,  
25 Right.

26  
27 Karl Moritz,  
28 -- and it would affect them.

29  
30 Council Vice President Knapp,  
31 Okay.

32  
33 Karl Moritz,  
34 But the Impact Tax would –

35  
36 Council Vice President Knapp,  
37 So we get the Impact Taxes.

38  
39 Councilmember Floreen,  
40 This is just the test.

41  
42 Council Vice President Knapp,  
43 Just the test. Okay.

44  
45 Council President Praisner,



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1 Well, it was the test; it wasn't the School Facilities Payment. Let me be clear. As I  
2 understand it, Councilmember Floreen's motion says any development with 30% or  
3 more affordable housing, which traditionally has been defined as MPDUs and may be  
4 defined as workforce -- but it does not require -- we would allow that development to go  
5 forward no matter -- from a school's perspective -- with no mitigation requirement, no  
6 payment requirement, no test, and no consideration. That's the motion as I understand  
7 it.

8  
9 Councilmember Floreen,

10 And if I just may clarify, Madame President, it's not unlike, not exactly like, but very  
11 much like, what the Council has just taken a position on in terms of the School Facility  
12 Payment in Enterprise Zones. Because that determination, as Council staff pointed out,  
13 is if we don't require it in the Enterprise Zone, it is tantamount to exempting a  
14 development from the School Adequacy Test -- at least up until the moratorium point.  
15 Well, that's what they say.

16  
17 Council President Praisner,

18 No, I don't think so.

19  
20 Councilmember Floreen,

21 I'll just direct you to the memo; I'm just reading it. I'm not making it up.

22  
23 Council President Praisner,

24 Well, there's been no payment on School Facilities Payment. But it does not exempt a  
25 development from going through a process of review or consideration.

26  
27 Councilmember Floreen,

28 It is -- as the staff says -- it's tantamount to doing that, and that's all I'm saying. It would  
29 be the same policy priority for affordable housing.

30  
31 Council Vice President Knapp,

32 The only other question I would ask is -- just as a point of reference -- of those 25,000+  
33 units, do we have some sense as to how many of those units will likely be affordable? I  
34 mean, is it safe to assume that roughly 12%, or is that a broad --

35  
36 Karl Moritz,

37 Well, it's only 12% of those above -- it wouldn't be hard to calculate because we can  
38 look at the list and see how many are above the threshold for the triggering. But I don't  
39 have the number.

40  
41 Council Vice President Knapp,

42 Okay.

43  
44 Royce Hanson,

45 We would estimate that 12% is a pretty good approximation.



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1  
2 Council Vice President Knapp,  
3 Okay.

4  
5 Council President Praisner,  
6 Okay. Councilmember Ervin.

7  
8 Councilmember Ervin,  
9 Thank you, Mrs. Praisner. I can't believe some of the things I'm hearing espoused at  
10 this dais about who qualifies for MPDUs and how this is not going to affect any of them.  
11 I'd like to see some of this data from my colleague here, Mr. Elrich. I qualify for MPDUs  
12 based on the salary I make here at the Council. I think there are a lot of people who  
13 qualify for this kind of assistance, in our County. It doesn't mean that -- just because  
14 there's not numbers of them lined up to receive it, doesn't mean that they don't qualify.  
15 What we're doing essentially with this annual Growth Policy is we're driving up the cost  
16 of all housing: single-family homes, apartments, affordable units. We might as well just  
17 put up a wall around Montgomery County that says, "Do not enter if you don't make 'X'  
18 amount of dollars a year because you can't afford to live here." So I'm getting kind of  
19 wary of hearing all this data espoused. I'd like to see some of it that outlines what you  
20 just said, Mr. Elrich, about the condition of the folks who are in the County and who  
21 qualifies for MPDUs and who doesn't.

22  
23 Councilmember Elrich,  
24 It was a comment that was made to us.

25  
26 Council President Praisner,  
27 Councilmember Leventhal.

28  
29 Councilmember Leventhal,  
30 Okay. Colleagues, I really am optimistic that despite some sharply-drawn differences  
31 here, we can work our way through to provide a better deal for projects that contain a  
32 substantial percentage of below-market-rate units. And I think we can get there if we  
33 can sort of tamp down the rhetoric a little bit and identify some real options. I had asked  
34 staff for a list of options; if they have it, I haven't seen it. So I asked for it at our last  
35 session. If it's in the packet, maybe they can bring it to my attention.

36  
37 Mike Faden,  
38 A narrow list of options was under the School Tax.

39  
40 Councilmember Leventhal,  
41 What page? What memo? We've got five different memo's here.

42  
43 Mike Faden,  
44 It's the 7, 9, and 10 items memo for today.



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1 Councilmember Leventhal,  
2 The one that says "Worksession"?

3  
4 Mike Faden,  
5 Right.

6  
7 Councilmember Leventhal,  
8 Okay. And what page are the options on affordable housing?

9  
10 Mike Faden,  
11 They are on page 2.

12  
13 Councilmember Leventhal,  
14 "Alternatives," page 2. Okay. Okay. So we have a motion before us, but I'm going to  
15 read these because I really want to try and find some common ground. Common  
16 ground, Mr. Berliner? Is he gone? [Laughter] I was reaching out for common ground,  
17 and I lost Mr. Common Ground. Great.

18  
19 Council President Praisner,  
20 Come on, folks. We've got about an hour plus to go. Let's try and do this.

21  
22 Councilmember Leventhal,  
23 All right. Look, I think there are more options than this. So staff has identified -- what? I  
24 have the floor. I have the floor, okay?

25  
26 Council President Praisner,  
27 Yes, you do.

28  
29 Councilmember Leventhal,  
30 "Exempt all units in a housing development where at least 30% of the units or MPDUs  
31 are affordable." This is effectively what Councilmember Floreen has proposed. My  
32 sense is it would make the most sense.

33  
34 Mike Faden,  
35 There is one distinction which I should point out now. This would not include workforce  
36 housing. Previously, workforce housing has never fallen within the definition of  
37 affordable housing.

38  
39 Councilmember Leventhal,  
40 Right. Look, we have one real example of a problem; and that is Lot 31. And Ms.  
41 Floreen is absolutely correct that the County spent an enormous amount of time and  
42 effort working to bring that about on County-owned land, back in the days when the  
43 Planning Board was a real supporter of affordable housing. I remember those days  
44 vividly; it wasn't that long ago. And the Planning Board gave us a list of options for  
45 increasing the stock of affordable housing. And one of those was that we would build





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1 housing on County-owned parking lots; and from that recommendation, Lot 31  
2 emerged. And many, many, man and staff hours – man and woman hours -- have been  
3 devoted to bringing this project about, both at Park and Planning and at DHCA and in  
4 the County Executive's Office. So a lot of resources have been sunk into making this  
5 project happen. And the question is now, do we want to impose such – now that we  
6 understand it's in the BCC cluster and it may be affected by the Facilities Payment  
7 charge, which really dramatically changes the economics of a project which has been  
8 has been a high priority, Metro friendly, transit-oriented development, smart growth,  
9 affordable housing. What other good buzz words can I use to describe this project that  
10 is consistent with many policy goals we've been working on for years? And we've just  
11 made a decision that puts it at risk. Now what makes sense to me – I mean I'll vote for  
12 Ms. Floreen's amendment, and we can dispose of it. It doesn't have the vote, so we can  
13 get that out of the way. Then we can talk about how to be consistent and how to do  
14 something that makes sense that achieves our affordable housing goal. We all know  
15 this is going to have a bad effect on affordable housing; let's not pretend it won't. We  
16 know this is going to increase the cost of building new units, so let's work together and  
17 find a way to exempt the big projects that we want to see – the big projects that we're  
18 trying to encourage. If this motion isn't it, then let's find the motion that will. Another  
19 option that isn't listed on page 2 is simply keep Impact Taxes at current rates -- okay? --  
20 so there's no surprises and no changes. So you're still charging the Impact Taxes, but  
21 you're not raising the Impact Taxes to change the economics at the end of the process.  
22 That's another option that staff didn't list here. So I'm trying to find a way where we can  
23 achieve common ground. We may not get nine votes for it, okay? And we'll see at the  
24 end of the day who really does support affordable housing. Thank you very much.

25  
26 Council President Praisner,

27 It just seems to me if before we call on the lights that are remaining – and, George, your  
28 light is still on -- it seems to me we're talking about a variety of things. This motion is  
29 almost an omnibus motion that exempts developments of 30% or more affordable  
30 housing from any discussion/consideration from a school's perspective; and I assume it  
31 will be made from a transportation perspective as well. Councilmember Leventhal has  
32 suggested that one may look at this only from – in addition or separately from a revenue  
33 perspective. But the motion in front of us is broader than revenue. It says you are not  
34 considered at all in the discussion of the Growth Policy.

35  
36 Councilmember Leventhal,

37 May I please just clarify one point? Look, I do strongly feel that what we do here should  
38 be consistent with what we just did on Enterprise Zones. And I'm not clear – I  
39 understand this motion doesn't have the votes. Let's get it out of the way quickly so we  
40 can move to something that we can agree on. But the issue of whether to exempt it from  
41 the tests altogether – if children attend school, those children who attend the school will  
42 be calculated in determining the capacity of the school. They just won't be calculated  
43 from the standpoint of whether a specific project, with a large percentage of below-  
44 market housing, will be subject to the test. It does not mean that that school won't be  
45 over capacity. The number of students either will or won't. It's just that project won't



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1 trigger a moratorium or a facilities payment charge. So a lot of statements have been  
2 made here that are not descriptive of what Ms. Floreen is trying to do. But, again, I know  
3 she doesn't have the votes. So let's vote, and then let's find a way we can do something  
4 that a majority of us can agree on to exempt these large affordable housing projects.

5  
6 Council President Praisner,  
7 Councilmember Andrews and then Councilmember Trachtenbeg.

8  
9 Councilmember Andrews,  
10 Thank you. Well, it's not an affordable housing project if it's only got 30% affordable  
11 housing. Focus on the units; don't focus on a building where 70% is market rate. Let's  
12 do the math. If you've got, let's say that you've got a 100-unit condo being built at, say,  
13 \$600,000 each. And if 2.5% is the Impact Fees you would collect -- I think that Impact  
14 Taxes, that was said -- that's \$15,000 then per unit. So seventy times that -- the seventy  
15 units you're exempting -- that's a little over a million dollars; it's \$1,050,000. To get five  
16 extra affordable housing units -- if you're getting twenty-five already through the  
17 combination of MPDUs and workforce -- that's a lot to pay. That's \$200,000 for each  
18 additional unit you're getting. I would think there's a more efficient way to produce  
19 affordable housing through leveraging funds, through the Housing Initiative Fund, for  
20 projects that have a larger percent of affordable housing or that are all affordable. So I  
21 don't think this is an efficient way to produce affordable housing, and it makes our traffic  
22 and school overcrowding worse.

23  
24 Council President Praisner,  
25 Councilmember Trachtenbeg.

26  
27 Councilmember Trachtenberg,

28  
29 Thank you to the Council President for allowing me to have a point of personal privilege.  
30 I wanted to actually have some votes recorded. I know we took some straw votes  
31 earlier, I believe on four matters. And on the motion provided by Councilmember  
32 Berliner on the School Facilities Payment, I would vote for it. On the motion that was  
33 made by Councilmember Leventhal again relating to the continuance of the Enterprise  
34 Zone exemption, I would also vote in favor of that. And on the third item, which I believe  
35 related to continuing the Impact Fee in cluster at grade level where needed -- again, I  
36 believe Council Vice President Knapp --

37  
38 Council President Praisner,  
39 It was a cluster, not a grade level.

40  
41 Councilmember Trachtenberg,  
42 Okay, and I would vote for that. And the last item, I believe, related to the de minimis  
43 development. I would ask that I would be recorded with my colleagues in support of  
44 three or fewer units.



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1 Council President Praisner,  
2 Okay. Thank you. We have a motion before us which would exempt from the Schools  
3 Facilities Test any development with 30% or more affordable housing units. Those in  
4 favor of the motion, please indicate. [Show of hands] Councilmembers Ervin, Floreen,  
5 Knapp, and Leventhal. Those opposed? Councilmembers Andrews, Berliner, Praisner,  
6 Trachtenberg, and Elrich. The motion fails. Councilmember Floreen.

7  
8 Councilmember Floreen,  
9 Thank you, Madame President. I know this is a tough one; it's a hard struggle. But I  
10 really do think this is an important priority that we have identified time and time again in  
11 this effort. I'll just note, we did run the numbers for Lot 31. School Impact Taxes and  
12 Transportation Impact Taxes, as they currently stand, set that overall project back over  
13 \$1 million. That's since yesterday. As the County Executive staff has indicated, it's a  
14 tricky balancing act. Leveraging is nice if you have something to leverage with; but if we  
15 take away those resources, it's just not going to happen. My next motion then would be  
16 to at least exempt these projects from the School Facility Payment. They're not subject  
17 to the test, but as with Enterprise Zones, would be exempted from the School Facilities  
18 Payment.

19  
20 Councilmember Leventhal,  
21 Second.

22  
23 Council President Praisner,  
24 It's been moved and seconded that the developments be exempt from the School  
25 Facility Payment. Councilmember Leventhal, do you want to speak to this or no?

26  
27 Councilmember Leventhal,  
28 Yeah, I just think there's value in making the rule consistent with what we've decided to  
29 do on Enterprise Zones. I think some simplicity and consistency have merit, and these  
30 are both important goals. And I agree it would be better from the standpoint of public  
31 policy to have way more than 30% of the units be affordable. But the reality, as we've  
32 seen of the marketplace, is you can't build projects like that; developers won't do them.  
33 So the projects that are online right now, where developers are going above and  
34 beyond what is required by law, are getting us to about 30% -- which includes MPDUs  
35 and workforce housing. That's the reality of where we're at right now. And we're going to  
36 get, from the Affordable Housing Task Force, a list of options in the next few weeks  
37 stating we're in a crisis; stating we've got to try all kinds of new policy tools; stating that  
38 we've got to be creative; stating that we've got to find ways to stimulate the market more  
39 than we have been doing to get new units online. So these are goals that, as I say, it  
40 wasn't that long ago we as a County were really dedicated to and scratching our heads  
41 trying to figure out how to incentivise affordable housing. If that's not where we are as a  
42 County any longer, well, these votes will tell the story. It seems to me that these  
43 affordable housing votes are -- it's very important that we figure out how to incentivise  
44 this housing. And we have to recognize what is actually going to happen. When you're  
45 dealing with bringing new units online, you've got to deal with builders. You know, we



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1 may not like it; but that's who's building the housing. And these are the projects that we  
2 see, and Lot 31 is an example.

3  
4 Council President Praisner,  
5 I would urge everyone at this table to try to keep the rhetoric down as we go through  
6 this process. Mr. Faden has the floor.

7  
8 Mike Faden,  
9 Just one clarification because we may not have made this totally clear earlier. The  
10 current exemption in the Enterprise Zone is for the affordable units, which is also true  
11 for both the School and Transportation Impact Tax. At this point, there's nothing in  
12 current law that exempts the entire development.

13  
14 Councilmember Leventhal,  
15 I'm sorry; but that's not what I understood we voted for.

16  
17 Council President Praisner,  
18 No, that's what we voted for.

19  
20 Councilmember Leventhal,  
21 I thought all of the units in the Enterprise Zone –

22  
23 Council President Praisner,  
24 No, the affordable ones.

25  
26 Mike Faden,  
27 No, just the affordable ones.

28  
29 Councilmember Leventhal,  
30 Well, so was that your understanding, Ms. Floreen?

31  
32 Councilmember Floreen,  
33 No. I thought it was that all projects in the Enterprise Zones were exempt from these  
34 taxes.

35  
36 Councilmember Leventhal,  
37 Affordable units everywhere --regardless of location -- are exempt from our fees. Not  
38 just in Enterprise Zones.

39  
40 Mike Faden,  
41 Affordable units everywhere are exempt –

42  
43 Council President Praisner,  
44 Not the development.



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1 Mike Faden,  
2 -- but not the whole development.

3  
4 Councilmember Leventhal,

5  
6 What is the difference between an Enterprise Zone and anywhere else in the County --  
7 with respect to what we just voted for? What did we just vote for on Enterprise Zones?

8  
9 Mike Faden,  
10 To maintain -- for the School Facilities Payment, to maintain the same rule as applies to  
11 the Impact Tax in Enterprise Zones.

12  
13 Councilmember Leventhal,  
14 And so if you're bringing a multiunit project online in an Enterprise Zone --

15  
16 Mike Faden,  
17 I'm sorry. In an Enterprise Zone, everything is exempt in an Enterprise Zone. I'm going  
18 to correct myself.

19  
20 Councilmember Leventhal,  
21 Mike, help us out here; you're creating confusion.

22  
23 Mike Faden,  
24 But that is not because they're affordable developments; it's because everything in an  
25 Enterprise Zone is exempt.

26  
27 Councilmember Leventhal,  
28 Right. And they're -- okay. Thank you very much. So all units constructed -- new units  
29 constructed in an Enterprise Zone -- regardless of whether they are market rate units or  
30 below-market-rate units, are not subject to School Facilities Payment, School Impact  
31 Fee, or Transportation Impact Fee. Is that correct?

32  
33 Mike Faden,  
34 That is correct, but it's not --

35  
36 Councilmember Leventhal,  
37 Thank you very much. Thank you. So Ms. Floreen's amendment would apply that same  
38 standard to multiunit projects where at least 30% of the units are affordable, MPDU,  
39 workforce, below-market units. That would be the same standard for the entire project;  
40 that's what Ms. Floreen is proposing.

41  
42 Council President Praisner,  
43 Further, Mr. Leventhal? Councilmember Berliner.

44  
45 Councilmember Berliner,



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1 I'd like to make a suggestion to my colleagues. And there's a motion on the floor, I  
2 believe; and there may even be a second at this point. I would request my of  
3 colleagues, I don't think that this is a particularly productive way to get to the objective  
4 that you seek, Councilmember Leventhal, in terms of finding common ground on this  
5 issue. It is clear that there are strong views on this matter. We will have this before us  
6 for another week. These are straw votes. We have a week to have internal  
7 conversations with respect to alternative ways to get to the objective you seek, which is  
8 to provide more affordable housing, and to see whether or not there are fiscal tools and  
9 other tools that are before us that are appropriate in pursuit of that objective -- an  
10 objective that I think nine of us share. As to whether or not we share whether this is the  
11 appropriate way and the appropriate time to deal with this issue, may be up for debate.  
12 But I don't find this process in this moment to be something that is conducive to coming  
13 to common ground and to finding a consensus on something that is this important and  
14 requires considerable more thought than we're able to give it in this moment -- in light of  
15 all the other things that we have on our plate at this moment. So it is a suggestion for  
16 my colleagues. You can feel free to keep pursuing this path; but if the goal is to find  
17 consensus, I don't get that this is the way to achieve it.

18  
19 Council President Praisner,  
20 Okay. Councilmember Trachtenbeg.

21  
22 Councilmember Trachtenberg,  
23 Just a brief set of remarks. I would second the motion that's been made by  
24 Councilmember Berliner. I very much believe that this is an issue that we need to  
25 continue to look at, not just today or this week or this month or next month. But really it's  
26 a challenge that will take probably many years to address; and we're not going to come  
27 that easily to consensus this afternoon. And I think rather than get into a heavy rhetoric  
28 conversation, what might serve us better is to really flush out some ideas that we have  
29 individually between today and next week. So I really would like to speak in support of  
30 what Councilmember Berliner suggested about finding common ground.

31  
32 Royce Hanson,  
33 Madame President?

34  
35 Council President Praisner,  
36 Yes.

37  
38 Royce Hanson,  
39 Just a factual comment. Lot 31 has been approved by the Planning Board. And it  
40 contains a total of 250 units; 31 of which are MPDUs, 35 are workforce housing. That's  
41 a total of about 26%.

42  
43 Council President Praisner,  
44 So it's less than 30% and would not fall under this motion anyway; but it's already been  
45 approved.



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1  
2 Royce Hanson,  
3 It wouldn't fall under the motion anyway because it's been approved.

4  
5 Council President Praisner,  
6 And it's already been approved.

7  
8 Royce Hanson,  
9 Yes. So any discussion of Lot 31 as a specific project is not in order because it doesn't  
10 relate to this process.

11  
12 Glenn Orlin,  
13 Well, it's not in order with regards to the test.

14  
15 Council President Praisner,  
16 It could, as it relates to the revenue issues, which is what I think Councilmember  
17 Berliner was referring to. Councilmember Floreen.

18  
19 Councilmember Floreen,  
20 You know, we are in a world where the details do matter. And we are establishing  
21 policy. That's our job, folks. It's not to go back and to work out some kind of secret deal  
22 or a negotiation –

23  
24 Council President Praisner,  
25 Nancy, I really think the word "secret" isn't necessary.

26  
27 Councilmember Floreen,  
28 Excuse me. That's been suggested.

29  
30 Council President Praisner,  
31 No it wasn't.

32  
33 Councilmember Floreen,  
34 And this is the time where we have this conversation. And I'm sorry, it is difficult; and it  
35 is hard. And we are supposed to balance competing interests. And this is an interest  
36 that I think needs to be balanced out loud, in public, at this time. This has not been –  
37 I've raised it in Committee. It's in some of the packets – not all of the packets. And I  
38 think – you know, if you don't want to support it, fine. Let's have a vote. I'm good with  
39 that. But let's not not have the conversation. We've had a robust one. I have some other  
40 suggestions for conversation. I'm sorry that this is hard. This is hard. This is why we ran  
41 for office -- to try to do things that we care about and believe in. And this is one subset  
42 of that. I really do ask for a vote on the motion.

43  
44 Council President Praisner,



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1 Well, that's what I was going to do after everybody stopped talking; but there are still  
2 lights on, Councilmember Floreen, and lights are respected. Councilmember Leventhal.

3  
4 Councilmember Leventhal,

5 I appreciate the suggestion of my colleagues that we should work together and identify  
6 a way not to harm either projects that have been underway for some period of time or  
7 projects that are upcoming. The discussion on affordable housing, I think, is not limited  
8 just to the facilities payment charge. So I appreciate and respect the Council President  
9 and Committee Chair's desire to expedite this conversation. One way of doing that  
10 might be to lump all of the affordable housing votes together in a single basket, which  
11 would be in order at any time depending on the desire of the presiding Councilmember.  
12 So we need not do that now, although there is a motion before us that I would suggest  
13 we vote on. I appreciate what I heard to be an offer from Mr. Berliner and Ms.  
14 Trachtenberg to work together. Ms. Trachtenberg said it might take years; I hope it  
15 won't. I hope it would take maybe hours or days rather than years. But as I said before, I  
16 think there is probably something -- I'm going to vote for Ms. Floreen's motion; but I  
17 would throw out the possibility of just keeping Impact Tax rates at current levels and not  
18 increasing them for this universe of projects that the County Executive and the Housing  
19 Opportunities Commission have identified. I'm striving here to find something that we  
20 can get five or more votes for; but Nancy is well -- it seems to me -- within her rights and  
21 very much in order to make motions right now regarding the School Facilities Payment.  
22 And there is a motion and it is in order and it is before the Council and we'll see where  
23 the votes are. And then, it seems to me, she is further in order to continue to raise the  
24 issue of affordable housing which is central to this debate and the costs that we're  
25 adding to building new housing in Montgomery County. So I think there's merit in many  
26 of the things that have been said. And I do think, ultimately, there's a solution here.

27  
28 Council President Praisner,

29 I certainly think so too, Mr. Leventhal. The only reason that we're dealing with a revenue  
30 piece at this point is because the School Facilities Payment is separate from the  
31 discussion and packets that we have on a whole variety of other issues which we  
32 haven't got to as yet. And looking at the time, I think there was great wisdom in not  
33 having us having this action next week where -- or the week after where we have to  
34 vote on -- by which we have to have had a vote on the resolution. So we do have time  
35 to work through this both this week and next week. That's why we scheduled this this  
36 way. The motion in front of us though relates, as I recall, to the School Facilities Test.  
37 And the question now is to vote on that since there are no other lights. All in favor of  
38 Councilmember Floreen's motion?

39  
40 Councilmember Leventhal,  
41 On the payment.

42  
43 Council President Praisner,

44 On the payment. [Show of hands] Councilmembers Ervin, Floreen, Leventhal, and  
45 Knapp. Those opposed? [Show of hands] Councilmembers Elrich, Trachtenberg,





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1 Andrews, Berliner, and Praisner. The motion fails. I'd like to suggest that keeping with  
2 Councilmember Berliner's suggestion that we might want to look at all of these issues  
3 together from a financial perspective -- both in transportation as it relates to affordable  
4 housing, both in transportation and schools in one piece -- that might make it a little  
5 easier for folks. The next action that we need to take though relates -- I was going to go  
6 to Impact Taxes and Recordation Tax; but given the discussion about the Impact Tax  
7 question, I wonder if my colleagues would feel more comfortable starting to deal with  
8 transportation? It's up to you. Councilmember Floreen.

9  
10  
11  
12  
13  
14 Councilmember Floreen,  
15 Well, Madame President, obviously I'm going to stick to this theme, however we  
16 address it. And if you're suggesting that we will return to affordable housing issues  
17 generally at another time -- .

18  
19 Council President Praisner,  
20 Yes, that's what I was suggesting.

21  
22 Councilmember Floreen,  
23 -- that's fine with me. What I did want to propose though that we have on the list, at the  
24 very least, excepting the MPDUs and workforce housing units from the School Facilities  
25 Payment. Just the units.

26  
27 Council President Praisner,  
28 I thought that motion was just --

29  
30 Councilmember Floreen,  
31 Not -- the workforce housing units are not excepted --

32  
33 Council President Praisner,  
34 Exempted?

35  
36 Councilmember Floreen,  
37 -- exempted from anything. It's only the MPDUs, as I understand it; is that correct?

38  
39 Councilmember Leventhal,  
40 I'll second that motion.

41  
42 Council President Praisner,  
43 All right. The motion that has been made is to exempt workforce housing units --

44  
45 Councilmember Floreen,



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1 Along with MPDUs.

2  
3 Council President Praisner,  
4 Well, the MPDUs are already exempt, so –

5  
6 Councilmember Floreen,  
7 We're talking about the School Facilities Payment; that's the element we're on.

8  
9 Council President Praisner,  
10 We're on the School Facilities Payment. The motion is to exempt workforce housing  
11 units as well from the payment of a school facilities payment. There are no other lights.  
12 All in favor of the motion? [Show of hands] Councilmembers Leventhal, Knapp, Floreen,  
13 and Ervin. Those opposed? [Show of hands] I would prefer to deal with all of this next  
14 week in the context of the Impact Tax –

15  
16 Councilmember Floreen,  
17 Okay. All right.

18  
19 Council President Praisner,  
20 -- not separately at this point -- and look at it all in one piece. Okay. What I would  
21 propose is that we try to work through the Local Area Transportation Elements, and  
22 then we will start next week with the Policy Area Review. And the revenue pieces would  
23 follow. Okay. With that in mind, staff, you want to start with the Local Area  
24 Transportation Review on page 3; right?

25  
26 Glenn Orlin,  
27 Really it starts at the bottom of page 3, but top of page 4.

28  
29 Council President Praisner,  
30 Top of page 4. Okay.

31  
32 Glenn Orlin,  
33 The first –

34  
35 Council President Praisner,  
36 I'm sorry; it's the original 6-8. October 30 packet worksession, and we're on page 4 --  
37 Local Area Transportation Standard by Policy Area. And the issue is the tightening of  
38 the standards consistent with a discussion we had, I believe, four years ago.

39  
40 Glenn Orlin,  
41 And two years ago.

42  
43 Council President Praisner,  
44 And two years ago related to the standards within certain policy areas relative to the  
45 characteristics of that area. Mr. Orlin, do you want to comment?



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Glenn Orlin,

I'll just start reading through the recommendations. I'll go with the first one first – which is that Councilmembers Praisner and Elrich, the Committee recommendation therefore recommends tightening the standards in Aspen Hill, Clarksburg, Cloverly, Fairland, White Oak, Gaithersburg City, Germantown East, Germantown West, Montgomery Village Air Park, North Potomac, Olney Potomac, and R&D Village policy areas by 25 critical lane volume. And the Damascus policy area and rural areas by 50 critical lane volume. Ms. Floreen does not recommend making these changes.

Council President Praisner,

That second local area transportation review standard deals with the Germantown Town Center. The proposal related to that would recognize the increased transit capacity; dedicated buses; and their bus system is a dedicated bus, and it's a rapid bus from the standpoint –

Glenn Orlin,

It's an express bus that runs as frequently as every five minutes from the Trade Center to Shady Grove.

Council President Praisner,

So given that standard, the Committee unanimously recommends loosening the standard in the Town Center from 1450 critical lane volumes to 1600 critical lane volumes. The next recommendation – we're going to go through all three of them, and then we'll come back.

Council Vice President Knapp,

Okay.

Council President Praisner,

The next recommendation related to the local area transit test is the time frame; and that's policy area as well as local area of the test that the Committee is recommending is a four-year test taking effect at the time of adoption of the Growth Policy. And the next recommendation relates to discussion we had with staff relative to the additional mitigation that exists from existing and background traffic above the standard. Staff and we had discussed that nearby jurisdictions – including, I believe, Prince George's County and others -- incorporate this concept in their review. And the majority of the Committee is recommending that for each impacted intersection where existing plus background traffic exceeds the local area traffic review standard, that require a new development to mitigate 150% of the critical lane volumes it will generate, or less if less mitigation is needed to achieve the standard. And this was recommended by the Planning Board and Council staff. The question about the number of signalized intersections to be tested in any LATR study, we had some significant conversation about them. They appear on page 5 of your packet. Councilmember Floreen and I recommend approval of the Planning Board numbers, remembering that this is



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1 minimum number of intersections that need to be looked at in each direction; and they  
2 are the signalized intersections, not the specific immediate intersections. They relate to  
3 signalized. Councilmember Elrich recommended a different set of standards and  
4 number of signalized intersections. The next issue related to Queuing Analysis. The  
5 Committee unanimously recommends, including text in the Growth Policy Resolution,  
6 indicating that "queuing from adjacent intersections may be used as a factor in  
7 determining whether an intersection meets the LATR Standard." And we recommend  
8 including more specific guidance in the guidelines as to how this queuing would be  
9 considered. The point was made to us that you cannot consider traffic in the intersection  
10 if they never get to the intersection because of problems beyond that intersection  
11 creating queuing there. So the other issues that came up, though – the issue of non-  
12 auto mitigation -- there is no Committee recommendation. The language or the  
13 discussion arose as we talked about this last week. There is language in the Growth  
14 Policy related to the Planning Board permitting a reduction in the amount of roadway  
15 construction or traffic mitigation needed to satisfy the conditions of LATR. And the  
16 administrative guidelines include some of the specificity as far as trip and credits. One  
17 of the concerns that had been raised was whether the non-auto amenities should be  
18 incorporated more broadly and with more specificity. We did not come -- we did not  
19 discuss this. The next and last issue before we get to Policy Area Review -- and we will  
20 stop before we get to that -- deals with the Georgetown Branch Trolley and North  
21 Bethesda Transit Way. I think you will recall the conversation as to whether it is  
22 necessary to include this language -- what message it may send by not including this  
23 language. The Committee majority recommended deleting it. I think there was some  
24 strong conversation last week about continuing to include the trolley and the transit way  
25 specifically in the Growth Policy, and we need to take a vote on that one way or the  
26 other. So with that in mind, we'll go back to Local Area Transportation Review from a  
27 standpoint of the standards in different policy areas. The numbers that I think were  
28 recommended by the Committee are consistent with what the Council discussed at least  
29 two years ago -- and maybe four years ago -- but were not incorporated in the Growth  
30 Policy because there was no adopted Growth Policy two years ago. So it was two years  
31 ago that it was discussed as a recommendation to tighten the LATR Standards as  
32 described in specific policy areas. So Council Vice President Knapp.

33  
34 Council Vice President Knapp,  
35 Thank you, Madame President. Just a couple questions. First, as it relates to the first  
36 element -- increasing the CLV from 25 to 50 in the areas noted -- what's the practical  
37 effect of that?

38  
39 Glenn Orlin,  
40 It decreases the CLV.

41  
42 Council Vice President Knapp,  
43 So it decreases, not increases.

44  
45 Glenn Orlin,



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1 It tightens the standard by 20 volumes.

2

3 Council Vice President Knapp,

4 Right. It tightens the standard; but practically, what happens out there?

5

6 Glenn Orlin,

7 At the margin at some intersections, it might make the difference of whether a particular  
8 turn lane is added or not.

9

10 Council Vice President Knapp,

11 But we haven't done the analysis to know?

12

13 Glenn Orlin,

14 At some intersections – it really depends on the situation. In many circumstances it will  
15 not make a difference. In some circumstances it'll make a difference in terms of either  
16 adding a turn lane or not. It might make a difference in terms of the degree of trip  
17 reduction. It's a marginal change.

18

19 Council Vice President Knapp,

20 How did – if in many instances you said it won't make a difference, then how did we  
21 identify the intersections that we did – or at least the policy areas that were?

22

23 Glenn Orlin,

24 Well, I guess what I'm saying is that if a development goes through -- is proposed --  
25 they'll do a traffic study looking at existing and background traffic and traffic in the  
26 development.

27

28 Council Vice President Knapp,

29 Right.

30

31 Glenn Orlin,

32 And if you're at a policy area where the standard is currently 1550, it may be that all the  
33 intersections meet 1550; but it may be that one of them doesn't meet 1525. In that case,  
34 that 1525 intersection – something would have to be done, whether it's a small trip  
35 reduction program or adding a turn lane at that intersection. It's a marginal – it depends  
36 on the individual traffic study.

37

38 Council Vice President Knapp,

39 Does this tie to – one, two – the fourth one down? So that if there was a 1550 and now  
40 it's 1525, but now we'll put that to the point that it would – that development would put it  
41 over, then the requirement would go from, at least as proposed, from 100% to  
42 addressing -- mitigating 150%?

43

44 Glenn Orlin,

45 Yes.



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1  
2 Council Vice President Knapp,  
3 Those two are connected to each other. 150% or down to that new standard.

4  
5 Council President Praisner,  
6 But that would apply to anything.

7  
8 Glenn Orlin,  
9 That could apply for anything.

10  
11 Council President Praisner,  
12 The existing background calculation doesn't really relate only to these tightening  
13 intersections.

14  
15  
16  
17 Royce Hanson,  
18 As Mr. Orlin said, the effect is marginal; but the Board felt that it's -- it may be marginal,  
19 but it's important in two respects. And we did not recommend these reductions for two  
20 reasons. One is that it sort of conceptually shifts the emphasis more toward roadway  
21 improvements as opposed to transit improvements, because we're really dealing with  
22 intersections. And secondly, where improvements are made -- particularly in areas that  
23 are not now fairly dense -- it's going to probably have some marginal effect on the  
24 amount of impervious surface that is generated.

25  
26 Council Vice President Knapp,  
27 Because presumably you would add an additional lane, and it's going to add additional  
28 impervious surface, and --

29  
30 Royce Hanson,  
31 So, again, I don't think this is the biggest deal in the world.

32  
33 Council Vice President Knapp,  
34 Right.

35  
36 Royce Hanson,  
37 But it's a matter of concern to us.

38  
39 Council Vice President Knapp,  
40 Well, and I want to be clear. I mean, as one who just is just asking questions --  
41 sometimes you ask the question, and unlike on an attorney where you don't ask a  
42 question that you don't know the answer to, a lot of these questions, I'm just asking and  
43 seeing where they go. So it's important, but it's by no means any preconceived notion  
44 as to where this ends up. So I'm just trying to make sure I understand what the issue is  
45 that's in front of us. And so that's important to understand, and so I appreciate that.



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1  
2 Edgar Gonzalez,  
3 Madame President?

4  
5 Council President Praisner,  
6 Yeah, just a second. I have some councilmembers; and then I'll get back to you, Edgar.

7  
8 Council Vice President Knapp,  
9 Okay. I've got one more. As it goes through, as you go down to the Germantown Town  
10 centerpiece – and Dr. Orlin and I had spoken about this before – currently the  
11 Germantown Town Center is a fairly small, circumscribed area. And, as the Council will  
12 see in another year or so when we come back, if the Master Plan does what we hope it  
13 will do, it will change the configuration of a broader almost commercial area that at this  
14 point in time it doesn't make sense to necessarily look more broadly than what is the  
15 current circumscribed Town Center. But if may, upon looking at the Master Plan and  
16 whatever comes forward in proposal, to potentially revisit what is defined as the Town  
17 Center in Germantown. So I only raise that as a point to be noted so that when we get  
18 back to this in a year from now, that that's something that may be addressed. But I  
19 appreciate the Committee's efforts to make this change right now because I think this  
20 make's lot of sense given the introduction of the Transit Center and Town Center and  
21 the effectiveness of that over the course of the last couple of years. Then getting to the  
22 next one, which is the "requiring additional mitigation where existing and background  
23 traffic is above the LATR Standard." I'm just trying to get a sense as to the policy  
24 reasoning behind this, especially if -- I guess I'm struggling -- obviously, whether or not  
25 we do a policy area review, we'll get to that next. But it seems that if you're doing a  
26 policy area approach, that this doesn't – this seems to kind of – they seem to run into  
27 each other, at least on its reading to me. And so I'm just trying to get a sense of why the  
28 change from 100% to 150%, and how the Committee got to that perspective. Because I  
29 don't fully understand it if the other piece is going to be addressed in the policy area.  
30 This seems to kind of do both at the same time.

31  
32 Council President Praisner,  
33 Glenn, do you want to comment?

34  
35 Glenn Orlin,  
36 Sure. First of all, this is only for local area review.

37  
38 Council Vice President Knapp,  
39 Right.

40  
41 Glenn Orlin,  
42 So it only applies to what happens at intersections. But the initial idea came from staff  
43 and was modified by the Planning Board in a way I think was better. The initial idea was  
44 that if you're in a situation where the intersection is failing with just what's already been  
45 approved – what's existing and approved traffic – that is it enough to just say, "Okay,



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1 you can approve another development; and it's going to generate more traffic, as long  
2 as just that extra increment is mitigated." So you made it no worse than what it would be  
3 otherwise. Or should you be required to actually make the situation somewhat better?  
4 My recommendation, actually two years ago and four years ago and this year, was that  
5 it be reduced by 50 critical lane volume in those situations. The Planning Board came  
6 back and said, "Well, a better way of doing it is just to say whatever that amount of  
7 traffic that's being generated by the development, have them mitigate that and 50%  
8 more -- or whatever it takes to get down to the standard." And maybe this is better  
9 served by an example. If -- I'm making this up -- the critical lane volume standard in an  
10 area is 1600, let's say. And let's say the existing and background traffic generates a  
11 critical lane volume of 1800 at one intersection. Let's make it really simple -- one  
12 intersection's affected. A developer comes forward and says, "I'd like to have my  
13 development approved, and it's going to generate an addition 100 critical lane volume at  
14 that intersection, bringing it to 1900.

15  
16 Council Vice President Knapp,  
17 Okay.

18  
19 Glenn Orlin,  
20 The current rules would say you can be approved -- if you meet all the other  
21 requirements -- if you bring it back down to 1800.

22  
23 Council Vice President Knapp,  
24 Oh, okay.

25  
26 Glenn Orlin,  
27 But the Planning Board's recommendation is to say that you'd have to bring it down to  
28 1750; because we're in an area which is over congested, and you're going to help solve  
29 the problem. You're not going to solve the problem, but you're going to help towards  
30 solving the problem.

31  
32 Council Vice President Knapp,  
33 All right then. Well, let me follow back up with the Chairman because that would seem  
34 to fly in the face of what we just talked about. If you're proposing that we don't tighten  
35 the LATR Standards in these areas, and yet, by the same token, we're then going to  
36 say we should require more mitigation in these other areas, doesn't that get you back to  
37 the same point?

38  
39 Royce Hanson,  
40 In some specific instances it might. But remember that the tightened standards apply to  
41 all intersections

42  
43 Council Vice President Knapp,  
44 -- in those areas.





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1 Royce Hanson,  
2 -- in those areas. This only applies to the specific intersections that are operating in  
3 excess of their capacity --

4  
5 Council Vice President Knapp,  
6 Okay.

7  
8 Royce Hanson,  
9 -- and of the critical lane volume number. And rather than the current policy, which is  
10 essentially "Do no harm," --

11  
12 Council Vice President Knapp,  
13 Right.

14  
15 Royce Hanson,  
16 you know, keep it so it is continuing to operate as bad as it has been.

17  
18 Council Vice President Knapp,  
19 Right.

20  
21 Royce Hanson,  
22 This policy would say, "You've got to make it a little better than it has been."

23  
24 Council Vice President Knapp,  
25 Okay. Well, then my next question would be -- kind of following up on that -- can you  
26 practically make it a little bit better?

27  
28 Royce Hanson,  
29 Yes, I think so.

30  
31 Council Vice President Knapp,  
32 You think so? Give me an instance as to --

33  
34 Royce Hanson,  
35 Well, again, the example that Glenn used. If you have an intersection in which the  
36 critical lane volume by policy is supposed to be 1600 --

37  
38 Council Vice President Knapp,  
39 Right.

40  
41 Royce Hanson,  
42 -- if it's actually operating at 1800 --

43  
44 Council Vice President Knapp,  
45 Right.



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1  
2 Royce Hanson,  
3 -- a development comes in that ordinarily would be required to mitigate a hundred trips.

4  
5 Council Vice President Knapp,  
6 Okay.

7  
8 Royce Hanson,  
9 Instead we say that would bring it back down to -- the 100 trips added to the 1800 would  
10 be 1900. They mitigated 100; they're back at 1800.

11  
12 Council Vice President Knapp,  
13 Right.

14  
15 Royce Hanson,  
16 And the new policy would say, "You have to mitigate 150 trips," --

17  
18 Council Vice President Knapp,  
19 Right.

20  
21 Royce Hanson,  
22 which would bring down the volume of traffic there to 1750 per lane.

23  
24 Council Vice President Knapp,  
25 Right.

26  
27 Royce Hanson,  
28 And that's better than 1800.

29  
30 Council Vice President Knapp,  
31 No, no, I get that.

32  
33 Royce Hanson,  
34 It doesn't bring it all the way back down to the 1600 standard --

35  
36 Council Vice President Knapp,  
37 Right.

38  
39 Royce Hanson,  
40 -- in that one project.

41  
42 Council Vice President Knapp,  
43 I guess my point is, though, it gets to what you were just raising. Doesn't that still then  
44 just -- you're still going to have to just build more lanes. You still get back to the  
45 impervious surface issue.



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1  
2 Royce Hanson,  
3 You might in that case, yes.

4  
5 Glenn Orlin,  
6 It depends.

7  
8 Royce Hanson,

9  
10 But what I'm saying to you in the first case, don't make that the situation for every –  
11  
12 Council Vice President Knapp,  
13 Not for every place. There may be specific instances where that may be appropriate.

14  
15 Royce Hanson,  
16 Yeah.

17  
18 Council Vice President Knapp,  
19 Okay.

20  
21  
22  
23 Glenn Orlin,  
24 The other thing is that to the degree that these are improvements which are –

25  
26 Council President Praisner,  
27 Glenn, you have to speak up.

28  
29 Glenn Orlin,  
30 Oh, to the extent that these are improvements that are adding capacity and are on  
31 County roads, they're accreditable against the Impact Tax as well.

32  
33 Council Vice President Knapp,  
34 Okay -- today.

35  
36 Glenn Orlin,  
37 Today.

38  
39 Council Vice President Knapp,  
40 All right. Okay. I may have a motion once everybody's commented.

41  
42 Council President Praisner,  
43 Councilmember Floreen.

44  
45 Councilmember Floreen,



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1 Thanks. I just wanted to comment that my overriding concern about this is it's the LATR  
2 Standards -- tightening them -- and then this additional mitigation requirement is going  
3 to be very difficult -- especially the add on is going to be difficult, I think, to monitor. But I  
4 do think, more importantly, though -- at least from my perspective -- I think it's going to  
5 run us headlong into the Road Code issues because we are trying to focus on  
6 community design and how things look as well as how they operate. And with our  
7 emphasis on -- we haven't quite gotten to the part about the mitigation elements. But  
8 what we need are more sidewalks; what we need are bike lanes -- as well as these  
9 things. And they run up against one another.

10  
11 Royce Hanson,  
12 They do.

13  
14 Councilmember Floreen  
15 And so the more you push down on one, the less you're going to be able to achieve on  
16 the other side of the equation. So that's why I've taken the positions I did throughout.

17  
18 Council President Praisner,  
19 Councilmember Elrich.

20  
21  
22  
23  
24 Councilmember Elrich,  
25 I just think that what you raise I think calls us to look at mitigation -- and particularly,  
26 mitigation in the form of trip reduction. And the alternative to lane additions is trip  
27 reduction. And I think we need to be thinking more and more in doing that. And I'll raise  
28 this point again as we go on; but when you've got room at an intersection, it doesn't  
29 make sense to let a series of developers use up all the capacity until there's nothing left.  
30 And then the next developer, the unfortunate guy who comes along when you're at 1470  
31 and you're supposed to be 1450, there's nothing left. So it seems to me that sharing the  
32 responsibility for mitigating trips is something we ought to be asking everybody to do so  
33 that there's more room for people to get projects done without forcing the burden to fall  
34 on the last group of people who come through the queue. So I think there are other  
35 things we can and should be looking at, short of messing with what I think Nancy  
36 correctly identifies as efforts of the Road Code to kind of civilize our traffic situation.

37  
38 Royce Hanson,  
39 I think that's a very good point. And I think we are supportive of the idea of including  
40 direction to us in mitigation to focus first on transit and on non-automobile approaches  
41 to mitigation so that we can reserve the capacity that exists. There are cases in which  
42 the most appropriate thing to do is to improve an intersection; but there are a lot of  
43 cases where there are better alternatives. And it's useful, I think, to send a general  
44 signal -- to the public generally and to applicants in particular -- that that's what we  
45 expect.



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1  
2 Council President Praisner,  
3 You want to follow up? And then Councilmember Leventhal is actually next. Let's come  
4 to common ground. Every other word can come from each -- the different  
5 Councilmembers. I'm keeping score.

6  
7 Councilmember Berliner,  
8 As the Chairman observed and as my colleague pointed out, we did have a  
9 conversation with respect to this issue -- and it's reflected in the packet -- in which there  
10 was some skepticism with respect to the current policy which allows, for example, in  
11 North Bethesda we can take credits as high as 90. Trips can be for things -- amenities if  
12 you will. And my proposal would be that we reduce in half the ceiling of such non-auto  
13 mitigation in order to ensure that there is in fact more trip reduction and trip mitigation,  
14 just to set a higher -- if you would have a better sense, I do want us to formalize your  
15 suggestion and ensure that as a first priority that we do. Trip reduction is a second  
16 priority. Trip mitigation -- and only where there is not a possibility of trip reduction and  
17 trip mitigation would you will consider non-auto mitigation.

18  
19 Royce Hanson,  
20 I would hope that you won't go quite that far.

21  
22 Councilmember Berliner,  
23 All right.

24  
25 Royce Hanson,  
26 I think it's all right to set ceilings on these; but I think the ceiling needs -- I don't think  
27 there's a -- you know, this isn't science. But I think the ceiling as it now exists is fairly  
28 reasonable. And I say this for this reason. There are circumstances -- well first, let me  
29 back up and say the fact that you can get that much as a maximum does not mean that  
30 we're necessarily inclined to just take that off the top and say, "Do all that first." But  
31 there are circumstances, for example, where it may really be appropriate to do some  
32 non-auto mitigation amenities that are really more than amenities -- providing major  
33 bicycling connections, for example. I spent about a year studying biking facilities in  
34 urban areas, and we've got an extensive system of bikeways and lanes in the County.  
35 The only problem is, they're not well connected. This reduces considerably the potential  
36 for bicycle commuting. Now, that may not be in the immediate future a big change. But  
37 when I see what's happening in other metropolitan areas, the increased use of the  
38 bicycle for commuting is, in some cases, pretty substantial. So providing a good bike  
39 facility in an area may be a very appropriate way to proceed. So I guess all I would urge  
40 you is, give us the direction and reinforce our inclination to use these sparingly and  
41 wisely. But don't clamp down so hard on this that we can't deal with situations where  
42 they're really useful.

43  
44 Council President Praisner,



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1 All right. The non-auto mitigation came up in our conversation. There is no specific  
2 language in front of us for that perspective. It seems to me that between now and next  
3 week, we need language

4  
5 Royce Hanson,  
6 Let me work with you to try to develop some language that would be helpful.

7  
8 Council President Praisner  
9 or language of a direction with some prioritization with however the language may be.

10  
11 Council President Praisner,  
12 And the sooner you can develop that language and circulate it, the better the  
13 opportunity for folks to comment and react. So if we can work with staff,  
14 Councilmembers who are interested – I know there are a few of us who are interested in  
15 this issue -- including the PHED Committee and T&E Committee probably and other  
16 Councilmembers – so we probably should see what the Planning Board is  
17 recommending, what staff is working on, and then circulate it so folks have a chance to  
18 weigh in. Councilmember Leventhal, I apologize. Back to you.

19  
20 Councilmember Leventhal,  
21 There's no need to apologize, thank you Madame President. First of all, I'm going to get  
22 to this LATR issue; but I'd like to get the Council President's sense – both for our  
23 convenience and those who are here – I'm prepared to stay as long tonight as the  
24 Council President would like. But what is the timeframe by which you think we might  
25 conclude this evening? We're going to try to finish LATR, and then we're going to end.  
26 Thank you.

27  
28  
29 Council President Praisner,  
30 And to the extent we have conversation as opposed to motions, that will lengthen the  
31 time; but I'd like to –

32  
33 Councilmember Leventhal,  
34 But we would not take up hammer at all today?

35  
36 Council President Praisner,  
37 No.

38  
39 Councilmember Leventhal,  
40 Okay, and then if I could continue. This is a point of personal privilege –

41  
42 Council President Praisner,  
43 Sure.

44  
45 Councilmember Leventhal,



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1 -- because I'm just sort of thinking --

2  
3 Council President Praisner,

4 No, that's fine. I missed an important obligation today which I was happy to do -- Right,  
5 and I appreciated that.

6  
7 Councilmember Leventhal,

8 -- but I'm sort of thinking about next week.

9  
10 Council President Praisner,

11 Right.

12  
13 Councilmember Leventhal,

14 Would it be the Council President's intent that we would wrap up all straw votes one  
15 week from today?

16  
17 Council President Praisner,

18 We will complete going through on straw votes and have action on the policy the  
19 following week.

20  
21 Councilmember Leventhal,

22 Okay and so looking at this draft agenda for next week, it would appear that we would --

23  
24 Council President Praisner,

25 Councilmember Leventhal, Linda Lauer and I have yet to modify. She's given me two  
26 proposals.

27  
28 Councilmember Leventhal,

29 Haven't gotten to it yet. So I would just say, the earlier the better with respect to these  
30 very important Growth Policy votes in the day.

31  
32 Council President Praisner,

33 I understand that. I was hoping to do this in the morning next week.

34  
35 Councilmember Leventhal,

36 Good. Okay. So now let me -- thank you. Appreciate it. So now let me ask you this. So  
37 Aspen Hill, Clarksburg, Cloverly, Fairland, White Oak, Gaithersburg City, Germantown  
38 East, Germantown West, Montgomery Village Air Park, North Potomac, Olney Potomac,  
39 and R&D Village policy areas by 25 CLV and Damascus policy and rural areas --

40  
41 Council President Praisner,

42 You've been everywhere. [Singing]

43  
44 Councilmember Leventhal,



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1 Yeah, right. I've been everywhere, man. [Singing] Right. By 50 CLV -- how were these  
2 intersections selected?

3  
4 Council President Praisner,  
5 They're policy areas, and they were selected based on the category that they are in now  
6 and the recommendations from two years ago that there needs to be a tightening in this  
7 area given the characteristics of those areas. Glenn, do you want to add to that?

8  
9 Glenn Orlin,  
10 Yeah, sure. The original idea four years ago -- and I would plead two years ago -- was  
11 that in tightening local area review, we wanted to tighten them not at all in Metro station  
12 policy areas and tighten them by larger amounts the further away you were from transit.  
13 So that in the areas around Metro stations -- not in Metro stations, but around them --  
14 you tightened them by 50. In areas that were policy areas that were much further away  
15 from transit, you tightened them by 75. And the rural areas, which include Damascus  
16 and sort of surrounded by rural, tightened them by 100. What the Council did four years  
17 ago was to say, "No, let's just reduce them all -- except for Metro station areas -- let's  
18 reduce them all by 50. I came back last year with trying to bring back the same  
19 proposal. Let's do the extra 25 in these policy areas that are further away from transit,  
20 and another 50 that would get down to, effectively, 100.

21  
22 Councilmember Leventhal,  
23 Glenn, you're a student of history; and I appreciate it. But I'm still trying to understand  
24 the criteria. I understand that it came up two years ago; I was here two years ago. But  
25 the criteria by which these were selected, plain and simply, was what?

26  
27 Glenn Orlin,  
28 Further away from transit.

29  
30 Council President Praisner,  
31 The characteristics of the policy area and its relationship in a geographic and the Metro  
32 station area.

33  
34 Councilmember Leventhal,  
35 So it was every policy area that was considered far away from transit?

36  
37 Glenn Orlin,  
38 Further away from transit than the --

39  
40 Councilmember Leventhal,  
41 Than the ones that are closer to transit.

42  
43 Glenn Orlin,  
44 -- policy areas that are closer.





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1 Councilmember Leventhal,  
2 So it's just generally a tightening. It's not –

3  
4 Council President Praisner,  
5 Yes.

6  
7 Councilmember Leventhal,  
8 With specific reference to conditions in those -- we're not saying these are the really bad  
9 policy areas.

10  
11 Council President Praisner,  
12 No.

13  
14 Glenn Orlin,  
15 No.

16  
17 Councilmember Leventhal,  
18 We're just saying that every policy area that's not a Metro station policy area ought to  
19 be tighter.

20  
21 Council President Praisner,  
22 They're based on characterizations. Right. Remember, Silver Spring is at 1800 -- which  
23 means that we allow more congestion in that Metro policy area.

24  
25 Councilmember Leventhal,  
26 Okay.

27  
28 Council President Praisner,  
29 And then the further away from having that capacity -- the Metro station capacity -- the  
30 tighter those characteristics.

31  
32 Councilmember Leventhal,  
33 Okay. Now remind me, please, going back to that horrible battle, 2003 Growth Policy,  
34 what was it that we did in 2003? How was LATR tightened in 2003 beyond what had  
35 been adopted in 2001?

36  
37 Glenn Orlin,  
38 You reduced all the policy areas by 50 CLV except Metro station policy areas.

39  
40 Councilmember Leventhal,  
41 So this is tightening the screw one more time.

42  
43 Council President Praisner,  
44 Yes.



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1 Councilmember Leventhal,  
2 Okay. That answers my question. Thank you.

3  
4 Council President Praisner,  
5 Okay. Councilmember Knapp – Vice President Knapp.

6  
7 Council Vice President Knapp,  
8 Thank you, Madame President. One point and a motion. First of all – and, Glenn, you  
9 kind of reminded me of this -- during some of the multitude of documents we've  
10 reviewed, there is this notion that if you look at the Washington D.C. Region that we  
11 have kind of these incremental circles that as you kind work your way outside of the  
12 core, that you have lessening or, I guess, more suburban/rural types of delineations --  
13 which on its face seems to make a lot of sense as you kind of look at that as the center  
14 of the bull's eye. The problem with that is that in Montgomery County, our development  
15 is we have wedges and corridors. And so running through the middle of those rings is  
16 one great big corridor. And in a couple of other areas we have, we have more density.  
17 And you reminded me of this when you said Damascus is a rural area. Well, Downtown  
18 Damascus is not a rural area; around Damascus is a rural area. Damascus is a  
19 community of between 30 and 40 thousand people. Olney is about 45 thousand people.  
20 There is a fair amount of density in those areas. And so when we look at how we're  
21 addressing these issues, we have to look, I think, more – as much in the wedges and  
22 corridors element of our policy as we do these concentric rings where the further out  
23 you get, that that is a rural area; therefore, the CLV must look like this. In Downtown  
24 Damascus, that may not make sense. In Downtown Germantown, that may not make  
25 sense. And so I think we need to start -- as we look at -- as our County continues to  
26 change a little bit to a more urban feel in certain areas – I think we need to come up with  
27 policies that begin to reflect that and begin to make a statement. Like, "Damascus is  
28 rural," isn't an accurate statement. And so I just think we need to start thinking about  
29 how our policy more accurately reflects that. I understand where it came from; I'm just  
30 not sure that's accurate as much as it once was.

31  
32  
33 Glenn Orlin,  
34 Well, if I may, I think it is; because, see, the relationship has always been – and you  
35 don't have to follow this any more – but has always been that where there's more quality  
36 and quantity of transit, a higher level of congestion is tolerated. And that's why Metro  
37 station areas – even Shady Grove, which is pretty far out – it's 1800. The policy is –

38  
39 Council Vice President Knapp,  
40 Pretty far out from what?

41  
42 Glenn Orlin,  
43 From the center of the city.

44  
45 Council Vice President Knapp,



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1 Well, yeah, but we just did a whole –

2  
3 Glenn Orlin,

4 No, it's important because –

5  
6 Council Vice President Knapp,

7 But this notion of “in” and “out” -- I mean, Germantown is a community of nearly 100,000  
8 people. “Out” isn't really – I mean it kind of has its own sphere of influence. And you  
9 want to have increased transit capacity. You want to have -- all the way up the corridor.  
10 You want to have it up to Frederick; and, quite honestly, you ultimately want to have it to  
11 Haverstown.

12  
13 Glenn Orlin,

14 What is the quantity and quality, I would ask, of the transit in Germantown East? Let's  
15 take Damascus. Damascus is served by one bus route that runs every thirty minutes in  
16 rush hour.

17  
18 Council Vice President Knapp,

19 And that should probably be changed, in all honesty.

20  
21 Glenn Orlin,

22 The demand does not support it.

23  
24 Councilmember Knapp

25 Well, it doesn't support it because people can't get on the bus once a day and hope to  
26 actually get home. But that's a whole other debate that we should have – I mean that's  
27 the problem.

28  
29 Councilmember Leventhal

30 Well, maybe all these mitigation requirements will increase bus service up there.

31  
32 Council President Praisner,

33 Right. That's right.

34  
35 Council Vice President Knapp,

36 Well, it might. But I mean I just -- my point is -- this is a more tangential point – that I just  
37 think we need to be careful about this notion of “out.” When you have communities of  
38 nearly 100,000 people, that's not “out” any more; that's kind of a place unto itself  
39 working it's way all the way up that corridor. And so I realize at one point in time that  
40 that was considered “out” because everything focused on the inner core, which was  
41 Downtown D.C. That's not really true; and especially as we try to put jobs and housing  
42 closer together, that becomes even less true. And so I just think that's something we  
43 need to keep in mind as we start looking at policy.

44  
45 Councilmember Leventhal,



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1 Can I follow-up on the Council Vice President's comments?

2  
3 Council President Praisner,

4 Let me follow up for a moment, and then you can. I think Glenn's use of the term "out"  
5 or "way out" or "far out, man," may be technically incorrect.

6  
7 Council Vice President Knapp,  
8 Understood.

9  
10 Council President Praisner,

11 But the point is that from a standpoint of tolerating congestion and expecting congestion  
12 and therefore not requiring a level of mitigation -- whether it's bus service or capacity in  
13 one form or another -- is going to be still from a standpoint of where we expect the  
14 density to occur. Where we will tolerate more congestion is where the development --  
15 we've planned the development to occur. Certainly not in Damascus are we planning  
16 the development to occur. So it's related to where the development is; and it's also  
17 related to a great extent, I think, to reliable and often fixed transportation availability  
18 versus bus service which, as George says, we're trying to increase the availability and  
19 also increase that option. But from a ridership perspective -- the likelihood of quantity of  
20 ridership -- the further out, the less it's likely to be there. George, you wanted to follow  
21 up.

22  
23 Councilmember Leventhal,

24 I do. And this is just directly in response to the Council Vice President's point, I'm going  
25 to make a suggestion. And what I think is giving me heartburn -- and maybe what is also  
26 giving the Council Vice President heartburn -- knowing these areas as I do -- I have  
27 been everywhere -- and listening to the various spokespeople for these communities,  
28 the one area that has really indicated that it wants more jobs -- that it wants a better  
29 ratio of jobs to housing -- is Germantown. And I guess my question might be, could we  
30 take -- we're already agreeing to loosen the standard in Germantown Town Center.  
31 Would the Council be agreeable to taking Germantown East and Germantown West out  
32 as well? And that would be my first suggestion. And would that increase the Council  
33 Vice President's comfort level? I think it would increase mine. And then I have a  
34 question about Gaithersburg City, which is very simply -- Gaithersburg City has a mayor  
35 and City Council. Have they asked us to do this? I understand that Impact Fees and  
36 mitigation requirements and all that impose there, apply there. I know we have a special  
37 relationship with Gaithersburg with respect to the application of this regime, but do they  
38 want this? Do they want us to -- ?

39  
40 Council President Praisner,  
41 Well, it isn't the city; it's the non-city area.

42  
43 Councilmember Leventhal,  
44 Non-city areas of the city policy.



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1 Council President Praisner,  
2 It's a policy issue.

3  
4 Council Vice President Knapp,  
5 I got it. I understand.

6  
7 Council President Praisner,  
8 It's a policy area, and it's called Gaithersburg City; but it's not the municipal –

9  
10 Councilmember Leventhal,  
11 Could we just stick with – would the Council Vice President prefer it if we took  
12 Germantown East and Germantown West out? Since we know that to the extent we  
13 hear from that community at all – in-town meetings, when we meet at the Chamber -- no  
14 one group speaks for the whole community anywhere. But the consensus I've heard in  
15 Germantown is, "Give us more so we don't have to drive so far to get to work."

16  
17 Council Vice President Knapp,  
18 Well, I would. I guess the recommendation I was going to make was to – because given  
19 both how Glenn described it and then how the Planning Board Chair described it, and  
20 just the conversation we had as it related to looking at non-automotive elements of trip  
21 mitigation that we come up with, I'm still struggling with why we necessarily make these  
22 changes. I think it's something that we need to continue to monitor. We may want to  
23 make these changes. But it would seem to me that other than the fact that we didn't do  
24 it two years ago – and as I recall that discussion, I think it was just a tightening; it wasn't  
25 there wasn't a compelling need to do so -- that I would almost propose to go with what  
26 the existing policy is as the Planning Board has recommended. And let's look at it, and  
27 let's continue to watch it. But I don't necessarily want to put in place a policy that  
28 continues to exacerbate the impervious surface piece – especially something that even  
29 the suggester of this said it's only marginal anyway. I mean that would be my  
30 recommendation, but at the very least –

31  
32 Council President Praisner,  
33 Well, is that a motion?

34  
35 Council Vice President Knapp,  
36 That's a motion. If people don't like that, then I'm happy to do the Germantown piece.

37  
38 Council President Praisner,  
39 Okay. The Council Vice President has moved that we not make these changes which  
40 the Committee majority recommends, and it's been seconded. Councilmember Floreen,  
41 then Councilmember Elrich, and then Edgar Gonzalez -- on this issue – yes, I know.  
42 This issue is all that we're talking about right now. The motion is before us; people  
43 should speak to the motion.

44  
45 Councilmember Floreen,



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1 Thank you, Madame President. I just wanted to make the comment, there is a lot of  
2 history here. And the reason these policy areas were tightened some years ago was we  
3 also didn't have a policy area review test in front of us. The Planning Board didn't  
4 recommend one four years ago. It just seems like yesterday. And consequently, when  
5 we took the actions that we did, we said, "Well, let's focus on intersections because  
6 those are the most discreet community-oriented locations where a project's impact can  
7 and will be felt." And it was in that context that the rules were tightened. Because there  
8 was not a policy area review test that we were -- that we had to talk about. We  
9 examined it, but we did not have one from the Planning Board. And so I just say that  
10 keeping in mind that we have a whole lengthy conversation about the Pay More Test, I  
11 guess next week, there is a certain layering-on issue. There are certain credits, I guess,  
12 that can be achieved -- depending upon which problem you solve. But the context of  
13 how we got to this in the first place was because there weren't any proposals for a  
14 larger policy area test. So this is -- I just comment -- that's why I like the Vice President's  
15 proposal, because it allows us then to move to the Pay More conversation which has  
16 the larger impact issue -- and have that conversation in that area rather than here.  
17 Because that's where this issue continues to be addressed in a different context.  
18 Councilmember Elrich's light is off; so I'll turn to you, Edgar.

19  
20 Edgar Gonzalez,

21 Thank you, Madame President. On the issue of local area of review, a clarification. in  
22 the letter from the County Executive to you, he stated, "In general, I support LATR  
23 decisions made by the PHED Committee." But he did not necessarily point it out and  
24 say, "I recommend that you tighten the standards," as suggested in the packet. That is  
25 not the position of the Executive.

26  
27 Council President Praisner,  
28 So he supports everything, but not this.

29  
30 Edgar Gonzalez,

31 No. He supports many of the other things that you have; and not specifically these. And  
32 let me tell you some of the reasons why. Here are some of the reasons why. In the  
33 previous packet that you discussed last week, you stated -- or the packet stated -- that  
34 Prince George's County uses three policy areas; Frederick and Howard County use two  
35 policy areas. The Road Code -- bringing this issue to the Road Code -- has three types  
36 of areas: rural, suburban, and urban. So the Executive was -- in the discussions that we  
37 had with the Executive, we were talking about at most four classifications as opposed to  
38 having ten. You have ten. If there are differences of 25 vehicles from one area to the  
39 other, it makes it very difficult talking -- does it make it more difficult to implement? Yes.  
40 Do we need more resources to do that? Yes. Simplifying it would make it simpler for  
41 everybody? Yes. So that's one issue. So he did not endorse this specific  
42 recommendation.

43  
44 Council President Praisner,



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1 All right. But this issue doesn't speak to three or two or one; this speaks to just  
2 modifying, within certain policy areas, the standards.

3  
4 Edgar Gonzalez,  
5 Correct. So his position is more –

6  
7 Council President Praisner,  
8 That's the motion in front of us.

9  
10 Edgar Gonzalez,  
11 His position is more in line with the position that the Board and Mrs. Floreen have.

12  
13 Council President Praisner,  
14 Okay. All right. We understand the Executive supports the Planning Board's position on  
15 this issue. Councilmember Leventhal.

16  
17 Councilmember Leventhal,  
18 Well, you know I was thinking I would prefer to carve out just the two policy areas where  
19 I sense that there's community support for, in particular, more jobs in commercial  
20 development. I do follow this point, though. And you know the County Executive has  
21 basically said, "Let's shelve the whole Pay More discussion for six months or more."  
22 And so if what he's saying is – and this is what I'm trying to get clear, because it is  
23 important for the whole Council to understand -- if what Edgar's point is is this is too  
24 many policy areas to begin with. And we don't know what Pay More's going to look like  
25 once it's all done. And we don't know what the policy areas may be or how they'll be  
26 defined, since right now policy areas are a concept that's kind of vague since we don't  
27 actually have police area review. So there is some merit, I guess. I guess I'm arguing  
28 myself into voting for that – the motion I was planning not to vote for. I mean if we're not  
29 –

30  
31 Council Vice President Knapp,  
32 Keep talking then. I like that.

33  
34 Councilmember Leventhal,  
35 If we're not ready –

36  
37 Council President Praisner,  
38 It's been a long day, George.

39  
40 Councilmember Leventhal,  
41 It has been a long day. Madame President, we've made a lot of progress today.

42  
43 Council President Praisner,  
44 I think we have too.



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1 Councilmember Leventhal,  
2 We've made a lot of progress today. If we are not ready, as a body, to adopt Pay More -  
3 - which there's been some discussion to that effect, and the County Executive has  
4 urged us not to do right now -- then perhaps I might suggest rather than voting on the  
5 pending motion, that we hold off on the definition of policy areas that would be changed  
6 for the purpose of latter until we understand what we're going to do about Pay More.  
7 Does that not make sense? Yeah. Later. Pay more and later. Pay more later. Yeah.

8  
9 Council Vice President Knapp,  
10 The maker of the motion is amenable to that because these pieces do interact with each  
11 other. So I could see where that would make sense.

12  
13 Council President Praisner,  
14 So the motion has been withdrawn. We're still going to go through these LATR  
15 Standards to see if there are any other motions. I do think they may be interrelated, but  
16 they can stand on their own as well. And there are some issues associated with  
17 requiring the background traffic, etc. that come out of the Planning Board's  
18 recommendations that I -- are you suggesting not doing anything, or just your motion?

19  
20 Councilmember Leventhal,  
21 Oh, well, how is later determined if not by reference to policy area?

22  
23 Council President Praisner,  
24 It's the project and the intersections related to that project.

25  
26 Councilmember Leventhal,  
27 Adjacent intersections -- that's what I thought.

28  
29 Council President Praisner,  
30 It has no -- it is not --

31  
32 Councilmember Leventhal,  
33 Adjacent intersections, right. I think we should retain a test of critical lane volume at  
34 adjacent intersections.

35  
36 Council President Praisner,  
37 Right.

38  
39 Councilmember Leventhal,  
40 I think we should have such a test.

41  
42 Council President Praisner,  
43 Well, but the motion only related to changing some policy areas. Right. It did not relate  
44 to any of the other components in front of us.





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1 Councilmember Leventhal,  
2 Exactly. So all we're saying is park that.

3  
4 Council Vice President Knapp,  
5 Park the first one.

6  
7 Council President Praisner,  
8 Park the increasing – tightening standards.

9  
10 Councilmember Leventhal,  
11 Until we figure out what the definition of policy area is. Is.

12  
13 Council Vice President Knapp,  
14 Right.

15  
16 Council President Praisner,  
17 Okay. We can come back to that item, but I do want to move on to the Germantown  
18 Town Center. Do you want to park that one too? I think that it can be a standalone item  
19 itself, and that's – all right. The Committee's recommendation is to loosen the standard  
20 in the Town Center. It's recommended by the Planning Board and staff. The  
21 Committee's recommendation is in front of us. I see no lights. All in favor of approving  
22 the Committee's recommendation? [Show of hands] That is unanimous. The next  
23 question is the time frame for the LATR Test. The Committee majority recommends a  
24 four-year test on the Growth Policy Resolution. There are no lights in front of us. All in  
25 favor of the Committee's recommendation for a four-year test? [Show of hands]  
26 Councilmembers Andrews, Berliner, Knapp, Praisner, Trachtenberg, and Elrich. Those  
27 opposed? Councilmembers Leventhal and Floreen.

28  
29 Councilmember Leventhal,  
30 Could I just clarify?

31  
32 Council President Praisner,  
33 Yeah.

34  
35 Councilmember Leventhal,  
36 I just voted that way because it was the sense of the Council on the School's Test that  
37 we ought to adopt the five-year time frame, and consistency is desirable. So I'm in favor  
38 of traffic mitigation, obviously, as soon as possible; but I'm also in favor of simplicity and  
39 consistency.

40  
41 Council President Praisner,  
42 Well I think you can make a – well, I understand simplicity, but I think you can make a  
43 difference between the two.

44  
45 Councilmember Leventhal,



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1 Okay.

2  
3 Council President Praisner,  
4 Requiring additional mitigation where existing and background traffic is above the  
5 standard. This came out of the Planning Board as well. I see no lights. Are there  
6 motions on this one?

7  
8 Councilmember Floreen,  
9 Yes. Councilmember Floreen? Well, this it would seem to me to be one also to be put to  
10 the side along with the LATR Standards because it is related to the whole issue of  
11 mitigation -- the issue of how much you do -- the percentages. I guess the good thing  
12 about the fact that we haven't reached the Pay More stuff is that we will have the  
13 percentages that are related to the current proposals next week; is that right?

14  
15 Unidentified  
16 Partial mitigation. The partial mitigation, yeah.

17  
18 Councilmember Floreen,  
19 So we can look at all that in context. It would be helpful to understand the different  
20 levels of attention it seems to me in that context. I don't know why this would be -- it  
21 seems to me just to make sense to address that together. So I would move that we put  
22 that off until the conversation next week.

23  
24 Council President Praisner  
25 Councilmember Leventhal.

26  
27 Councilmember Leventhal,  
28 You know, I'll tell you; I'm going to go along with the Committee majority on this. But I  
29 just want to say, never let anyone say -- if we do this, if this ends up in the final Growth  
30 Policy -- that we have not extracted more than their fair share from developers on this  
31 point. We are going to get them to mitigate one and a half times of the traffic they  
32 generate, plus pay a Transportation Impact Fee to make up for the impact of the traffic  
33 they generate. Now, we may do all these things; but let us forever then, if we do it, bury  
34 this rhetoric about we're not getting enough in terms of the traffic generated from  
35 development. My God. How could we ask for more?

36  
37 Council President Praisner,  
38 Vice President Knapp. Vice President Knapp

39  
40 Council Vice President Knapp,  
41 It's okay. No, my inclination is just to hold on this one until you get to the policy because  
42 I'm struggling with trying to see how this doesn't interplay without -- but if that's not the  
43 will of the Council, I can abstain for now. But it just seems to me that this ties back to  
44 the policy piece. And perhaps I'm wrong, but that's my interpretation.



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1 Council President Praisner,

2 Well, whether you have a policy piece or not, the question the Planning Board  
3 recommends is dealing with the excess beyond LATR. If the majority of the Council  
4 would prefer to hold this, I'm happy to do that; but I think there is a value in voting for it  
5 now, one way or the other. Councilmember Berliner.

6  
7 Councilmember Berliner,

8 I would just observe that in a comparable context -- that is, in looking at areas in which  
9 we are permitting development to occur where we are over school capacity -- we  
10 decided to go to 150% mitigation, if you will, in terms of the payment predicated on this  
11 recommendation. So I believe that we have a consistent policy that basically says, "If  
12 you want to move forward in an area that is already over the line, that you need to not  
13 only pay, if you will, 100% of what would otherwise pay; but you need to pay half again."  
14 And I think that that's a --

15  
16 Unidentified

17 And you pay Impact Tax on top of that.

18  
19 Councilmember Berliner,

20 So I think that that -- in this context, in terms of mitigation -- that it's an appropriate  
21 approach, and I would urge that we move forward.

22  
23 Council President Praisner,

24 Okay. The Committee's recommendation is before us. All in favor of approving the  
25 Committee's recommendation? [Show of hands] Councilmembers Elrich, Trachtenberg,  
26 Praisner, Berliner, Andrews, and Leventhal. Those opposed? Councilmember Floreen.  
27 Those abstaining? Councilmember Knapp; Councilmember Ervin, temporarily absent.  
28 Okay. Let's then go to the LATR Study -- the number of intersections -- remembering  
29 two pieces. This is the minimum signalized intersections in each direction, and it does  
30 modify and increase the number. Councilmember Elrich had an alternative, but this is a  
31 Committee majority recommendation. And Councilmember Elrich.

32  
33 Councilmember Elrich,

34 I just want to make the point for my colleagues who haven't been part of this discussion  
35 before that what I'm trying to get at is to make sure that all the traffic gets counted that  
36 people are going to know go through these intersections. It doesn't make any sense to  
37 do traffic tests and exclude vehicles that you know are going to go through intersections  
38 because they're beyond the circle of intersections that you decided to count. It's like  
39 deciding not to know something's there because you're not going to open the door. I  
40 feel pretty strongly that what's outside the door is there; and to the extent that we know  
41 it, we ought to count it. And the Planning Board routinely distributes the trips from  
42 projects that are outside the number of intersections, and so they have some sense of  
43 where those trips are going to go. And I believe that all projects should take into account  
44 the distribution of those trips. I understand that the current policy only sets a minimum;  
45 but as I think other Councilmembers have pointed out, we have lots of things where we



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1 – if everybody did things in the perfect world the way we'd like it done, we might get a  
2 different outcome. But there's no guarantee that they'll count out the number of  
3 intersections. And you can go to a place like Silver Spring with signalized intersections.  
4 You can count five intersections and be within the core of Silver Spring and not count  
5 two mammoth projects that sit at either end of those five intersections. So I think it's  
6 important to count what you know is out there, and important not to pretend that you  
7 don't know it.

8  
9 Council President Praisner,

10 Okay. The Committee's recommendation is before us. All in favor of the Committee's  
11 recommendation? [Show of hands] Councilmembers Berliner, Leventhal, Knapp,  
12 Praisner, Trachtenberg, and Floreen. Those opposed? Councilmembers Elrich and  
13 Andrews. The next item is the non-auto mitigation; and we need to continue to have  
14 language next week on that issue. The last issue is the Special Provision for the  
15 Georgetown Branch Trolley and North Bethesda Transit Way. Councilmember  
16 Leventhal.

17  
18 Councilmember Leventhal,

19 Okay. Glenn Orlin and I had talked about this, and I guess Glenn was not able to get in  
20 touch with Councilmember Elrich. So let me just propose what I proposed at our last  
21 discussion on this. I think we should update this language. I don't think we should keep  
22 it word for word; neither do I think we should delete it. And I think we should update it,  
23 basically. Glenn, what I did say before when you and I talked? Because you and I came  
24 up with – well, I thought you wrote it down.

25  
26 Glenn Orlin,

27 I thought I did too, but –

28  
29 Councilmember Leventhal,  
30 We discussed it.

31  
32 Glenn Orlin,

33 Yeah. Well, certainly, it was the Purple Line of the Georgetown Branch Trolley Project  
34 for one thing. But I thought it was –

35  
36 Councilmember Leventhal,  
37 I tell you what -- I remember.

38  
39 Glenn Orlin,

40 I think it's that second bullet, Mr. Leventhal, on the top of page 7. The sense or it – just  
41 tell me if that's –

42  
43 Councilmember Leventhal,

44 Yes, that is the sense of it. In terms of the actual language, let's take out all the sort of --  
45 what's the word I'm trying to find? -- slightly derisive -- you know, that it's – the first



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1 sentence, I think, doesn't add anything. Let's just simply state that the capacity from the  
2 Purple Line, the North Bethesda Transit – the Purple Line, the Quarter City's Transit  
3 Way, and the North Bethesda Transit Way must not be counted until the actual system  
4 is constructed and operated -- or at least until there is reasonable certainty as to their  
5 exact dates of operation and amount of actual ridership. Period.

6  
7 Glenn Orlin,  
8 It probably should be one of those two things.

9  
10 Council President Praisner,  
11 Pardon me?

12  
13 Glenn Orlin,  
14 You're saying two things there. Either that when it's already operating or when you know  
15 what's the date; if would be helpful if it was one or the other.

16  
17 Councilmember Leventhal,  
18 Okay. Let's ask the Planning Board. How does the Planning Board actually do this?  
19 When does the Planning Board actually count capacity from a proposed transportation  
20 improvement?

21  
22 Karl Moritz,  
23 Well, we would count a transit project typically when it's fully funded.

24  
25 Councilmember Leventhal,  
26 Fine. Done. Let's say that. Let's say that, okay? And my thinking here is clear for those  
27 who – colleagues who were not present for the last discussion. I understand that this is -  
28 - what were the words you used, Chairman Hanson, before? Hortatory and what? It was  
29 alliterative. It was a beautiful phrase. Hortatory and harmless, I think.

30  
31 Royce Hanson,  
32 Something like that.

33  
34 Councilmember Leventhal,  
35 I think it was hortatory and harmless. Yes.

36  
37 Royce Hanson,  
38 It must have been extraordinarily brilliant.

39  
40 Council President Praisner,  
41 Profound. It was profound, Royce.

42  
43  
44 Councilmember Leventhal,  
45 It was -- characteristically brilliant.



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1  
2 Royce Hanson,  
3 So deeply profound, but not memorable.

4  
5 Councilmember Leventhal,  
6 I think he said that the language was hortatory and harmless, okay? But that the original  
7 intent was it was just like housekeeping. It was a technical correction -- that language  
8 was archaic, and it ought to be removed. My concern is that by removing it, those in the  
9 community who wish to do mischief for any of these projects would misinterpret the  
10 Council's intent and would think that the Council was making an affirmative statement  
11 that we intend to count capacity for projects that are only in the blueprint stage. And so I  
12 think we need to leave the language in; I think we need to update it and modernize it;  
13 and I so move.

14  
15 Council President Praisner,  
16 Modify the language in what way -- exactly the way you said?

17  
18 Councilmember Leventhal,  
19 No, I like what Karl said. That it would not -- capacity from any of these three transit  
20 projects would not be counted until the projects are fully funded.

21  
22 Karl Moritz,  
23 I'm sorry. There are only two that are only two that are referenced.

24  
25 Councilmember Leventhal,  
26 No. It would be the Purple Line, the Quarter City's Transit Way, and the North Bethesda  
27 Transit Way.

28  
29 Councilmember Trachtenberg,  
30 Second.

31  
32 Council President Praisner,  
33 So the language would read that the capacity from these three transit projects cannot  
34 be counted until they are fully funded.

35  
36 Glenn Orlin,  
37 Any of the projects would be --

38  
39 Council President Praisner,  
40 Pardon me?

41  
42 Glenn Orlin,  
43 You said, "they" -- Individual.

44  
45 Council President Praisner,



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1 Those individual projects.

2  
3 Councilmember Leventhal,  
4 Make sure the grammar is correct. That's the point.

5  
6 Council President Praisner,  
7 Right. Yes, I'm sorry. I think Councilmember Trachtenbeg has already seconded it. So,  
8 the motion is before us. All in favor of the motion, please indicate. [Show of hands] That  
9 is unanimous. Okay. We then will come back on the issue of the standards for some of  
10 the policy areas. We have agreed that the Germantown Center should have its  
11 standards loosened. We are going with four years. We are supportive of the background  
12 requirement of additional mitigation. We've revised the scope of the LATR as far as the  
13 intersections are concerned. We've revised the language on Georgetown Branch and  
14 North Bethesda and Carter City's Transit Way. And we will be looking for language next  
15 week on the non-auto mitigation.

16  
17 Glenn Orlin,  
18 Ms. Praisner, I think there's one thing we skipped over –

19  
20 Council President Praisner,  
21 What did I skip?

22  
23 Glenn Orlin,  
24 The Queuing Analysis.

25  
26 Council President Praisner,  
27 Pardon me? The queuing -- I'm sorry. Yeah. I started to write them down, and then I  
28 skipped it.

29  
30 Councilmember Leventhal,  
31 And Impact Taxes.

32  
33 Council President Praisner,  
34 Well, we haven't gone to the Impact Taxes.

35  
36 Councilmember Leventhal,  
37 But you're going to do that next week.

38  
39 Council President Praisner,  
40 Next week. Yeah.

41  
42 Councilmember Leventhal,  
43 So you're going to finish up all the remaining later and pay-more items and Impact  
44 Taxes.



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1 Council President Praisner,

2 There's one -- we are going to deal with the Policy Area Traffic Test. And we will deal  
3 with what's left of the LATR. And then we will go to the revenue measures -- the Impact  
4 Taxes and Fees. And any motions and discussions on affordable housing would fall  
5 within that context. Councilmember Trachtenberg's light is on and then Councilmember  
6 Floreen. Councilmember Floreen.

8 Councilmember Floreen,

9 Yes, I just had a request for staff. Since we've done the Schools Test, would it be  
10 possible for you to do us another map that shows us the contours of the decisions that  
11 we made today? Thanks.

13 Council President Praisner,

14 Oh, I'm sorry. I did not -- I neglected and skipped one; and that's the Queuing Analysis  
15 which is a recommendation to include tax that the queuing from adjacent intersections  
16 may be used as a factor in determining whether an intersection meets the LATR  
17 Standard. And we talked about including more specific guidance in the LATR as to how  
18 the queuing would be considered. It's not in the current policy, but the Committee  
19 unanimously recommends this language. Let's take a vote on that because I guess we  
20 didn't. All in favor --

22 Unidentified

23 What are we voting on?

25 Council President Praisner,

26 On the Queuing Analysis which the Committee unanimously recommended. I had  
27 neglected to do that. All in favor? [Show of hands] That is unanimous. There is one  
28 question that I had that I would like staff to come back next week. When we talk -- and  
29 it's an exhibit that was in your packet as you discussed, I think, the modifications that  
30 came forward to us. It's an exhibit that compared the transportation network  
31 assumptions. I think what came out of that as a result of our conversation about the  
32 difference between four-year and five-year or six years -- my assumptions and  
33 understanding about the projects for funding and the test that we use was four-year or  
34 five year inclusion when we take the action as it relates to funding or construction. And I  
35 firmly understand that relationship from a standpoint of CIPs. But when it comes to the  
36 Maryland Department of Transportation projects that are listed, none of those are  
37 funded that you're listing in and counting as far as traffic mitigation or capacity. And I  
38 have a problem with including something when it hasn't been funded -- whether it's CTP  
39 or CIP. And it would seem to me that it has to be consistent, and it should be funded;  
40 otherwise, you can't count that capacity. So there are some that you've assumed in the  
41 PAMR analysis. They're all related to the Clopper Road widening, Woodfield Road  
42 widening; using 29 Musgrove Interchange -- that's No. 12 on our list. There are a heck  
43 of a lot more projects that the Council has identified for the State as funded that we  
44 want funded before we get to that intersection. So including that it's going to be funded  
45 and available by 2010 is, I think, stretching it. As well the -- maybe the Georgia





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1 Avenue/Randolph interchange is different because of the Council's support but still, it's  
2 a question. The 97/28 intersection definitely isn't funded. And so including these in the  
3 assumptions of analysis for PAMR, I think, raises questions. And so I'd like to see  
4 analysis that doesn't include a State project that isn't funded.

5  
6 Councilmember Floreen,  
7 Thanks for the clarification.

8  
9 Councilmember Trachtenberg,  
10 Yeah, that's an excellent point.

11  
12 Royce Hanson,  
13 Can Mr. Hardy make a comment?

14  
15 Dan Hardy,  
16 Yeah. I think we explained that this has to do with the CLRP as opposed to the CIP. I  
17 take your point fully. I guess the one question is because what you've seen in the chart  
18 is two of those tasks are more recent ones where we have worked quickly with some  
19 difficult math and difficult model runs to do. We haven't cleaned that all up.

20  
21 Council President Praisner,  
22 I appreciate that.

23  
24 Dan Hardy,  
25 What I'd like to request is, "Is there a particular -- if the Council wants to move towards  
26 four years, for instance, we would really focus on --

27  
28 Council President Praisner,  
29 Well, we just did a vote on four years for LATR, and I'm assuming that those same  
30 votes would carry for a PAMR as well.

31  
32 Dan Hardy,  
33 That's what we expected as well. But then, that we would focus on --

34  
35 Royce Hanson,  
36 If we can focus on one period.

37  
38 Council President Praisner,  
39 Right. Absolutely.

40  
41 Royce Hanson,  
42 Because one of the problems that staff runs into with this in the kind of turnaround that  
43 you're asking is if they're doing this for three different scenarios --

44  
45 Council President Praisner,



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1 Absolutely. I understand that.

2  
3 Royce Hanson,  
4 -- it takes three times as long.

5  
6 Council President Praisner,  
7 Right. I would recommend given the Council's actions on the LATR, I can't imagine  
8 having a different test -- that it's four years, and whatever is funded in four years -- not a  
9 dream on someone's list.

10  
11 Dan Hardy,  
12 Agreed. And the only other clarification is we also included roads that would be  
13 expected to be built as part of the pipeline development -- which are also not always in  
14 the CIP or CTP, but we presume that that is a sensible assumption to make.

15  
16 Council President Praisner,  
17 Because of the development.

18  
19 Dan Hardy,  
20 Because of the development.

21  
22 Royce Hanson,  
23 Right.

24  
25 Council President Praisner,  
26 It's already been approved.

27  
28 Dan Hardy,  
29 Right.

30  
31 Council President Praisner,  
32 Councilmember Berliner.

33  
34 Councilmember Berliner,  
35 I just wanted to share with my colleagues; and I've spoken informally with most of you  
36 with respect to that I will be proposing an alternative to the Board's PAMR Test. It's a  
37 slight tweak on it. I've shared it with the Board. I have distributed the chart which I  
38 understand is "clear as mud." You may get one. But during the course of this week, I will  
39 send around a memorandum explaining how I came to this and why I perceive it as  
40 actually a significant improvement upon what we have. And I just wanted to make sure  
41 that people were aware of it and that we have time to digest it. And I think this additional  
42 week will serve that purpose.

43  
44 Council President Praisner,



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1 I want to thank staff from the Executive; from the Planning Board; Royce, you; and our  
2 staff; and especially my colleagues for hanging in there all day long today. I think we  
3 have, as Councilmember Leventhal stated, made significant progress. There's a lot  
4 that's here. We will complete the straw votes next week, and hopefully move towards  
5 action on the resolution. Thank you very much. We are adjourned.